UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/39
12 February 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 8 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy

GE.98-10499 (E)

CONTENTS

		Paragraphs	Page
I.	THE MANDATE	1 - 6	4
II.	METHODS OF WORK	7	7
III.	ACTIVITIES OF THE SPECIAL RAPPORTEUR	8 - 27	7
	A. Consultations	9 - 12	7
	B. Missions/visits	13 - 14	8
	C. Communications with Governments	15 - 19	8
	D. Cooperation with intergovernmental and non-governmental organizations	20 - 21	9
	E. Other United Nations procedures and bodies	22 - 26	9
	F. Promotional activities	27	10
IV.	ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT	28 - 30	11
V.	COUNTRY SITUATIONS	31 - 178	11
	A. Introduction	31 - 32	11
	B. Situations in specific countries or territories	33	12
	Bahrain	33 - 34	12
	Bangladesh	35 - 37	13
	Belarus	38 - 39	14
	Bolivia	40 - 41	14
	Brazil	42 - 44	15
	Cambodia	45 - 48	15
	Colombia	49 - 55	16
	Croatia	56 - 57	18
	Cuba	58 - 64	18
	Egypt	65 - 67	20
	France	68 - 69	21
	Georgia	70 - 73	21
	India	74 - 85	22
	Indonesia	86 - 95	24
	Iran (Islamic Republic of)	96 - 98	31
	Kenya	99 - 103	32
	Lebanon	104 - 105	33
	Malaysia	106 - 116	34
	Mexico	117 - 119	36
	Nigeria	120	36
	Pakistan	121 - 131	37

CONTENTS (continued)

	Paragraphs	Page
Papua New Guinea	132 - 133	39
Peru	134 - 142	39
Philippines	143 - 148	42
Rwanda	149 - 152	43
South Africa	153 - 156	44
Spain	157 - 159	45
Switzerland	160 - 163	46
Tunisia	164 - 167	47
Turkey	168 - 174	48
Venezuela	175 - 176	50
Yugoslavia	177 - 178	51
V. CONCLUSIONS AND RECOMMENDATIONS	179 - 189	51
A. Conclusions	179 - 184	51
B. Recommendations	185 - 188	52

I. THE MANDATE

Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 1997/23 of 11 April 1997. This report is the fourth annual report to the Commission on Human Rights by Mr. Param Cumaraswamy since the mandate was established by the Commission in its resolution 1994/41 of 4 March 1994, renewed by resolution 1997/23 and endorsed by the Economic and Social Council in its decision 1997/246 of 22 July 1997 (see also E/CN.4/1995/39, E/CN.4/1996/57 and E/CN.4/1997/32).

2. Chapter I of the present report contains the terms of reference for the discharge of the mandate. Chapter II refers to the methods of work applied by the Special Rapporteur in the discharge of the mandate. In chapter III, the Special Rapporteur presents an account of the activities undertaken within the framework of his mandate in the past year. Chapter IV deals with the establishment of an international criminal court. Chapter V contains brief summaries of urgent appeals and communications to and from the Governments, along with the observations of the Special Rapporteur.

Terms of reference

3. At its fiftieth session, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks:

(a) To inquire into any substantial allegations transmitted to him (...) and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

4. Without substantially changing the mandate, the Commission endorsed in resolution 1995/36 the decision of the Special Rapporteur to use, beginning in 1995, the short title "Special Rapporteur on the independence of judges and lawyers".

5. In resolutions 1995/36, 1996/34 and 1997/23, the Commission on Human Rights took note of the annual report of the Special Rapporteur, expressing

appreciation for his working methods, and requested him to submit another annual report on the activities relating to his mandate to the Commission on Human Rights.

6. Several resolutions adopted by the Commission on Human Rights at its fifty-third session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention with regard to the different countries. These resolutions are:

(a) Resolution 1997/16 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, in which the Commission called upon all special representatives, special rapporteurs and working groups of the Commission to continue to give attention, within their respective mandates, to situations involving minorities;

(b) Resolution 1997/27 on the promotion of the right to freedom of opinion and expression, in which the Commission invited once again the working groups, representatives and special rapporteurs of the Commission on Human Rights to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression as affirmed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other relevant human rights instruments; and invited the working groups, representatives and special rapporteurs of the Commission, within their mandates, to take note of any deterioration in the right to freedom of expression;

(c) Resolution 1997/28 on hostage-taking, in which the Commission urged all thematic special rapporteurs and working groups to address, as appropriate, the consequences of hostage-taking in their forthcoming reports to the Commission;

(d) Resolution 1997/37 on human rights and thematic procedures, in which the Commission invited the thematic special rapporteurs and working groups to: (i) make recommendations for the avoidance of human rights violations; (ii) follow closely the progress made by Governments in their investigations carried out within their respective mandates; (iii) continue close cooperation with relevant treaty bodies and country rapporteurs; (iv) include in their reports information provided by Governments on follow-up action, as well as their own observations thereon, including in regard to both problems and improvements, as appropriate; (v) include regularly in their reports gender-disaggregated data and to address the characteristics and practice of human rights violations under their mandates that are specifically or primarily directed against women, or to which women are particularly vulnerable, in order to ensure the effective protection of their human rights; requested the thematic special rapporteurs and working groups to include in their reports comments on problems of responsiveness and the result of analyses, as appropriate, in order to carry out their mandates even more effectively, and to include also in their reports suggestions as to areas where Governments might request relevant assistance through the programme of advisory services administered by the Office of the High Commissioner for Human Rights; and suggested that the special rapporteurs, representatives,

experts and chairpersons of working groups of the special procedures of the Commission on Human Rights consider how those mechanisms could make available information on the particular situation of individuals working for the promotion and protection of all human rights and fundamental freedoms and how their protection could be enhanced, taking into account the ongoing deliberations of the relevant working group of the Commission;

(e) Resolution 1997/42 on human rights and terrorism, in which the Commission urged all thematic special rapporteurs and working groups to address, as appropriate, the consequences of the acts, methods and practices of terrorist groups, in their forthcoming reports to the Commission;

(f) Resolution 1997/43 on integrating human rights of women throughout the United Nations system, in which the Commission encouraged the strengthening of cooperation and coordination among all human rights treaty bodies, special rapporteurs, special procedures and other human rights mechanisms of the Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and requested that they regularly and systematically take a gender perspective into account in the implementation of their mandates, including information and qualitative analysis in their reports on violations of the human rights of women;

(g) Resolution 1997/46 on advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights, in which the Commission invited relevant United Nations treaty bodies, special rapporteurs and representatives, as well as working groups, to continue to include in their recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services and technical cooperation in the field of human rights;

(h) Resolution 1997/62 on human rights in Cuba, in which the Commission invited the Special Rapporteur on the situation of human rights in Cuba and the existing thematic mechanisms of the Commission to cooperate fully and exchange information and findings on that situation;

(i) Resolution 1997/69 on comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action, in which the Commission called upon all special representatives, special rapporteurs, independent experts and thematic working groups of the Commission to take fully into account the recommendations contained in the Vienna Declaration and Programme of Action within their respective mandates;

(j) Resolution 1997/75 on human rights and mass exoduses, in which the Commission invited the special rapporteurs, special representatives and working groups of the Commission and the United Nations human rights treaty bodies, acting within their mandates, to seek information, where appropriate, on problems resulting in mass exoduses of populations or impeding their voluntary return home and, where appropriate, to include such information, together with recommendations thereon, in their reports, and to bring such information to the attention of the High Commissioner for Human Rights for appropriate action in fulfilment of her mandate, in consultation with the United Nations High Commissioner for Refugees;

(k) Resolution 1997/78 on the rights of the child, in which the Commission, recommending that, within their mandates, all relevant human rights mechanisms and all other relevant organs and mechanisms of the United Nations system and the supervisory bodies of the specialized agencies pay attention to particular situations in which children are in danger and where their rights are violated and that they take into account the work of the Committee on the Rights of the Child, took various decisions with respect to the situation of children in various circumstances of difficulty.

II. METHODS OF WORK

7. The Special Rapporteur, in the fourth year of his mandate, continued following the methods of work described in the first report of his tenure (E/CN.4/1995/39, paras. 63-93).

III. ACTIVITIES OF THE SPECIAL RAPPORTEUR

8. The following sections give an account of the activities carried out by the Special Rapporteur in the implementation of the mandate entrusted to him by the Commission on Human Rights.

A. Consultations

9. The Special Rapporteur visited Geneva for his first round of consultations from 1 to 8 February 1997 in order to finalize his reports to the Commission. He held consultations with representatives of the Permanent Missions of Belgium, China, India and Nigeria.

10. He visited Geneva for his second round of consultations from 24 March to 8 April 1997 in order to present his report to the Commission at its fifty-third session. During this period the Special Rapporteur met with representatives of the Latin American Group, the Western Group and the Asian Group and other regional groups to brief them on his work as Special Rapporteur and to answer any questions they might have. He also held consultations with representatives of the Government of Nigeria. In addition, he held a briefing for interested non-governmental organizations and also met individually with several non-governmental organizations.

11. The Special Rapporteur visited Geneva for his third round of consultations from 20 to 23 May 1997 and to attend the fourth meeting of special rapporteurs/representatives, experts and chairmen of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, which was held from 20 to 23 May.

12. In conjunction with his missions to Belgium and the United Kingdom, the Special Rapporteur stopped over in Geneva from 31 October to 7 November 1997 for consultations. Again, in conjunction with his visit to New York, the Special Rapporteur stopped in Geneva from 22 to 29 November 1997 for further consultations.

B. Missions/visits

13. During 1997, the Special Rapporteur undertook a field mission to Belgium (14 to 18 October 1997) followed by a mission to the United Kingdom (20 to 30 October 1997). The Special Rapporteur's reports on these missions containing his findings, conclusions and recommendations can be found in addenda to the present report.

14. During the period under review the Special Rapporteur informed the Governments of Indonesia and Tunisia of his wish to carry out an *in situ* investigation. He reminded the Governments of Pakistan and Turkey of his previous requests to undertake a mission to those countries.

C. Communications with Governments

15. During the period under review, the Special Rapporteur transmitted 18 urgent appeals to the following 12 States: Bangladesh, Colombia, Egypt, India, Mexico, Pakistan (4), Peru, Philippines (2), Tunisia, Turkey (3), Venezuela and Yugoslavia.

16. Seeking to avoid unnecessary duplication of the activities of other thematic rapporteurs and country-specific rapporteurs, the Special Rapporteur has joined during the past year with other special rapporteurs and working groups to transmit seven urgent appeals on behalf of individuals to the Governments of the seven following countries: Bolivia, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions on 6 March 1997; Brazil, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions on 20 June 1997; Colombia, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions on 17 July 1997; India, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions on 13 June 1997; the Islamic Republic of Iran, together with the Special Representative on the situation of human rights in Iran, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary or arbitrary executions on 2 July 1997; the Philippines, together with the Working Group on Enforced or Involuntary Disappearances; and Rwanda, jointly with the Special Rapporteur on torture, the Special Rapporteur on the situation of human rights in Rwanda and the Special Rapporteur on extrajudicial, summary or arbitrary executions on 23 January 1997.

17. The Special Rapporteur transmitted 26 communications to the following 18 Governments: Bahrain, Brazil, Colombia, Croatia, France, Georgia, India (4), Indonesia (2), Kenya (2), Lebanon, Malaysia (2), Mexico, Pakistan, Papua New Guinea, Philippines (2), Rwanda, Spain and United Kingdom (2).

18. The Special Rapporteur has also joined with other special rapporteurs to transmit three communications to the Governments of the following three countries: Switzerland, together with the Special Rapporteur on torture on 13 June 1996; Tunisia, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

on 4 December 1997; Turkey, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 7 October 1997.

19. The Special Rapporteur received replies to urgent appeals from the Governments of the following eight countries: Bangladesh, Belarus, Egypt, India, Pakistan, Peru (6), Tunisia and Turkey. Replies to joint urgent appeals were received from the Governments of India and the Islamic Republic of Iran. Replies to communications were received from the Governments of the following 12 countries: Colombia (4), Croatia, Cuba, Georgia (1), India (5), Indonesia, Kenya, Malaysia, Mexico, Philippines, Spain and United Kingdom (2). Replies to joint communications were received from the Governments of Switzerland (2) and Turkey. Other communications were received from the Governments of Bahrain and Peru (2).

D. Cooperation with intergovernmental and non-governmental organizations

20. The Special Rapporteur continued his dialogue with intergovernmental and non-governmental organizations in the implementation of his mandate. The Special Rapporteur thanks these organizations for their cooperation and assistance during the year.

21. In its previous correspondence with the Special Rapporteur, the World Bank addressed its concern at the incidence of corruption in the judiciary, particularly in developing countries. Of late, the Special Rapporteur has been receiving information of a general nature of such corruption in some countries. The Special Rapporteur will liaise with the World Bank on this issue to consider the feasibility of drawing up a programme of cooperation in this area.

E. Other United Nations procedures and bodies

1. Cooperation with special rapporteurs and working groups of the Commission on Human Rights

22. The Special Rapporteur continued to work closely with the mandate of other special rapporteurs and working groups. As previously indicated, the Special Rapporteur, in order to avoid duplications, where appropriate has joined in interventions with other special rapporteurs and working groups. The Special Rapporteur has also sought a joint mission to Tunisia with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. The Special Rapporteur continued to make reference to reports of other special rapporteurs and working groups on issues relevant to his mandate.

2. Cooperation with the Crime Prevention and Criminal Justice Division

23. In his third report (E/CN.4/1997/32, paras. 26-29), the Special Rapporteur referred to the importance of the work done by the Crime Prevention

and Criminal Justice Division in overseeing the implementation of the Basic Principles on the Independence of the Judiciary and the need for the Special Rapporteur to work closely with that Division.

24. The Special Rapporteur could not attend the Sixth Session of the Commission on Crime Prevention and Criminal Justice in Vienna, which was held from 28 April to 9 May 1997. However, he was informed by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention in Vienna that replies to the questionnaire regarding the use and application of the Basic Principles on the Independence of the Judiciary had been received from 77 countries as of 16 December 1997. The Special Rapporteur was also informed that the Crime Prevention and Criminal Justice Division is still in the process of undertaking a similar survey on the implementation of the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors. The Special Rapporteur will continue liaising with the same Division and will work closely with it for greater dissemination of the Basic Principles on the Independence of the Judiciary and its application in Member States.

3. Cooperation with UNDP

25. The Special Rapporteur thanks UNDP for the assistance and cooperation extended to him by UNDP offices in various countries.

4. Cooperation with the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights (OHCHR)

26. As mentioned in his third report, the Special Rapporteur is collaborating with the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights to develop a training manual for judges and lawyers (E/CN.4/1997/32, para. 31), as part of the United Nations Decade for Human Rights Education. The Special Rapporteur attended an expert meeting from 5 to 8 May 1997 to review the draft manual. The draft will be revised on the basis of substantive comments made by the participants at the expert meeting and will be further piloted through forthcoming courses to be offered to judges and lawyers by the OHCHR programme of technical cooperation, before its final publication. The Special Rapporteur expects this manual to constitute a comprehensive curriculum for the training of judges and lawyers on international human rights standards, to be adapted case by case to particular national needs and legal systems.

F. Promotional activities

27. As stated in his third report, the Special Rapporteur considers the promotion of the importance of the independence of the judiciary and the legal profession for respect for the rule of law in a democratic society, in the spirit of the Vienna Declaration and Programme of Action, to be an integral part of his mandate. In this regard, the Special Rapporteur continued to receive invitations to address legal forums, seminars, conferences and training programmes. Due to other commitments during the year, the Special Rapporteur could not accept all the invitations. Nevertheless, the Special Rapporteur accepted the following invitations:

(a) In Cambodia, from 23 to 25 June 1997, the Special Rapporteur addressed the opening of the judicial training programme organized by the Cambodian Law Training Project. He held consultations with the Minister for Justice, the local OHCHR office and other donor organizations.

(b) From 25 to 30 August 1997 the Special Rapporteur attended the fifteenth LAWASIA Conference in Manila where he delivered several addresses and participated in panel discussions with several Chief Justices of the Asian-Pacific region.

IV. ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

28. The Special Rapporteur wishes to express his appreciation for the efforts of the Preparatory Committee on the Establishment of an International Criminal Court (created by General Assembly resolution 50/46 of 11 December 1995) which has been meeting periodically to create a draft treaty on the establishment of a permanent international criminal court to be put before a conference of plenipotentiaries in Rome in June-July 1998. The Special Rapporteur supports a strong permanent international criminal court with jurisdiction over serious violations of international human rights and humanitarian law.

29. With regard to the independence and impartiality of such a court, the Special Rapporteur is firmly of the opinion that the permanent international criminal court must have a strong independent prosecutor who can initiate investigations on his own motion without any political or other considerations. A prosecutor with the requisite independence and impartiality will add considerably to the integrity and independence of the court.

30. As the Special Rapporteur discussed in his earlier report to the Commission (E/CN.4/1997/32, paras. 45 and 46), it is important that the method of remuneration of judges of the court from its inception be seen to be compatible with their security of tenure so as to maintain their independence. It is equally important for the court's decisions, either interlocutory or final, to be complied with by States. If States are permitted to ignore its decisions, the very object of the establishment of the court will be defeated and public confidence in the integrity of the court lost. The statute therefore must provide for a procedure to secure compliance when there is a failure to do so. The Special Rapporteur hopes that these issues will be adequately addressed at the next Preparatory Committee meeting before the final draft statute is presented in Rome.

V. COUNTRY SITUATIONS

A. Introduction

31. This chapter contains brief summaries of the urgent appeals and communications transmitted to Governments between 1 January and 10 December 1997, as well as replies to the allegations received from the Governments between 1 January 1997 and 28 January 1998, including meetings the Special Rapporteur had with government representatives. In addition, the Special Rapporteur takes note in this chapter of the activities of other mechanisms which are related to his mandate. Where he has deemed it

necessary, the Special Rapporteur has included his own observations. He wishes to emphasize that appeals and communications reflected in this chapter are based exclusively upon information that has been transmitted to him directly. Where information was insufficient, the Special Rapporteur was not in a position to act. Further, he deeply regrets that lack of sufficient human resources has prevented him from acting upon all the information transmitted to him during the past year, and he apologizes to the organizations who have provided him with well-documented and well-researched reports on particular situations. The Special Rapporteur also recognizes that problems concerning the independence and impartiality of the judiciary are not confined to the countries mentioned in this chapter. In this regard, he wishes to emphasize that readers of the present report should not interpret the omission of a particular country from this chapter as indicative that the Special Rapporteur considers that there are no problems with the judiciary in that country.

32. In preparing this report, the Special Rapporteur took note of reports of his colleagues, Mr. Thomas Hammarberg, Special Representative of the Secretary-General on the situation of human rights in Cambodia; Ms. Elisabeth Rehn, Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, and Mr. Michel Moussalli, Special Representative on the situation of human rights in Rwanda.

B. Situations in specific countries or territories

Bahrain

Communication from the Government

33. On 7 May 1997, the Government of Bahrain transmitted a letter to the Special Rapporteur requesting clarification on the passage in his report to the fifty-third session of the Commission on Human Rights which expressed concern that "the trials before the State Security Court violate article 14 of the International Covenant on Civil and Political Rights owing to the apparent lack of due process in the Court" (E/CN.4/1997/32, para. 76).

Communication to the Government

34. On 12 November 1997, the Special Rapporteur replied to the letter of 7 May 1997, explaining that he had received serious allegations concerning the alleged lack of due process within the State Security Court. According to the source, defendants are not allowed access to legal counsel until they are brought to the State Security Court; defence lawyers allegedly do not have access to court documents, nor do they have adequate time to prepare a defence for their clients; defence lawyers are given limited access to their clients during the trials before the State Security Court; and the sessions before the Court are allegedly held in camera. Further, article 7 of the Criminal Security Court Law provides that "the verdict passed by the court shall be final and shall not, in any manner, be appealed against, unless the said verdict has been passed in the absence of the accused, in which event, the procedure stated in the foregoing article shall apply". It was also brought to the Special Rapporteur's attention that of three State Security Courts, two are presided by members of the Al-Khalifa family which governs the State of

Bahrain. The Special Rapporteur took note of the fact that the State Security Court Law does in fact provide for procedural guarantees that address the allegations contained in the communications sent by the Special Rapporteur to the Government. However, the source presented allegations concerning specific cases in which these procedural guarantees were not followed by the State Security Court, allegations that were summarized in the communications sent to the Government on 16 October 1996 and 18 November 1996.

Bangladesh

Communication from the Special Rapporteur

35. On 14 February 1997, the Special Rapporteur sent an urgent appeal to the Government of Bangladesh to express his concern over the legal situation of Mrs. Zobaïda Rashid, wife of Colonel Rashid. According to the source, Mrs. Rashid was arrested on 3 November 1996 in her Dhaka residence on a remand order and held for five days, during which time she was reportedly tortured to make her confess. It has been reported that she was brought before the Chief Metropolitan Magistrate on 12 November 1996 without the presence of her attorney and that the charges against her were unclear. Attempts to manipulate the legal proceedings were also reported; in particular, her defence attorney was misinformed of the dates of Mrs. Rashid's appearances in court and he did not have access to documents relating to the case.

Communication from the Government

36. In February 1997, the Government provided the Special Rapporteur with a reply to the urgent appeal sent on behalf of Mrs. Zobaïda Rashid. The Government stated that Mrs. Rashid was arrested on 3 November 1996 in the presence of her attorney, Mr. Forman Ali, and was prosecuted for possession of illegal arms. She was held at a police remand centre for five days and on 9 November 1996, she was produced before the Chief Metropolitan Magistrate, who granted further remand for four days. The allegation that she was tortured during her detention is false and unfounded. The Government added that the investigation has established the involvement of Mrs. Rashid in a criminal conspiracy to kill the then President of Bangladesh, Bangabandhu Shelkh Mujibur Rahman, and 32 others, including pregnant women and children, but she was never charged with any subversive act against the Government and she was never detained under the Special Powers Act 1974. The Government also asserted that she has been very well treated in jail and that she was allowed to receive visitors and lawyers. The Government also listed the names of relatives and advocates who visited her in detention between 1996 and February 1997.

Observations

37. The Special Rapporteur thanks the Government for its prompt response to his intervention. The Special Rapporteur has not heard further from the Government.

Belarus

Communication from the Government

38. On 10 January 1997, the Government provided the Special Rapporteur with a reply to his letter dated 12 November 1996 regarding the alleged process of suspending the Constitutional Court by the head of State following its decision concerning the referendum on two draft constitutions. The response of the Government contained information with regard to provisions embodied in the Constitution concerning the administration of justice and the appointment and independence of judges. It also gave detailed information regarding the organization of the judicial system and the status of judges as contained in the Republic of Belarus Act of 13 January 1995. The Special Rapporteur was also informed of the appointment proceedings, the activities and the competence of the Constitutional Court judges. The Government stated that the above-mentioned general information related to the period covered by the inquiry from the Special Rapporteur concerning the situation of judicial organs in Belarus. Finally, the Government added that on 24 November 1996, the Republic of Belarus adopted a new Constitution by referendum which amended the procedure for the appointment of judges. The President of the Constitutional Court, the President of the Supreme Court and the President of the Supreme Economic Court are now appointed by the President with the consent of the Council of the Republic, whereas these persons were all elected by the Supreme Council under the previous Constitution. The new Constitution has also increased the membership and age limit of the Constitutional Court.

Observations

39. The Special Rapporteur would like to thank the Government for its response. However, he notes that the Government did not provide him with information regarding the specific allegation he sent. He remains concerned that the judiciary may not be independent from the executive branch.

Bolivia

Communication to the Government

40. On 6 February 1997, the Special Rapporteur transmitted an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of lawyer and President of the non-governmental Permanent Human Rights Assembly of Bolivia, Mr. Waldo Albarracín, who had reportedly been detained by eight policemen. According to the information received, he was severely beaten and threatened with death. He was recently transferred to the headquarters of the Technical Judicial Police in La Paz and then taken to a hospital. It is reported that the incident may be related to a statement made by Waldo Albarracín to the press about a violent encounter between miners and the police which took place in the Amayapampa region of Bolivia and in which nine people were killed.

Observations

41. At the time the present report was finalized, no reply had been received from the Government.

Brazil

Communications to the Government

42. On 20 June 1997, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the State prosecutor, Luis Renato Azevedo da Silveira, and his assistant, lawyer Marcelo Denaday. It was reported that on 12 June 1997, Marcelo Denaday suffered an attempt on his life while he was driving with his wife and children. According to the information received, Marcelo Denaday and Luis Renato Azevedo da Silveira were investigating the murder of Carlos Batista de Freitas, a case in which members of the police organization Scuderie Detective le Cocq (SDLC) were allegedly involved. It was also reported that Luis Renato Azevedo da Silveira had been investigating the activities of SDLC for some time. Members of the police and of the judiciary may reportedly be involved in this organization. Furthermore, Luis Renato Azevedo da Silveira had requested police protection, which was denied due to lack of resources.

43. On 24 September 1997, the Special Rapporteur sent a communication to the Government concerning Pedro Montenegro, a lawyer, member of the Permanent Forum Against Violence of Alagoas (FPCV-Al) and member of Amnesty International Brazil Section, and Marcelo Nascimento, lawyer and President of the Grupo Gay de Alagoas and member of the FPCV-Al. It was alleged that both of them had received anonymous telephone calls warning them that unless they dropped their investigations into the murders of two homosexuals and a transvestite on 6 June 1996, they would be killed.

Observations

44. The Special Rapporteur regrets that no reply from the Government has been received to date.

Cambodia

45. Between 23 and 25 June 1997, the Special Rapporteur visited Cambodia at the invitation of the International Human Rights Group to address the opening of the training programme for the judges of Cambodia organized by the Cambodian Law Training Project.

46. On 24 June, the Special Rapporteur called on the Minister of Justice of Cambodia and expressed his concern over the state of judicial independence in that country. Of particular concern to the Special Rapporteur was the failure on the part of the Government to convene the Supreme Council of Magistracy, which is the constitutional mechanism for the appointment of judges. The Special Rapporteur learnt that there have been a few appointments of judges by the Government, which may be unconstitutional. Such appointments could have very serious implications on the judgements and decisions of those judges.

47. The Minister of Justice expressed his difficulties in convening the Council because of political differences between the two parties then sharing governmental power.

48. The Special Rapporteur associates himself with the concerns expressed by the Special Representative of the Secretary-General for Cambodia over the independence of the judiciary in Cambodia, as expressed in his recent report to the General Assembly (A/52/489).

Colombia

Communications to the Government

49. On 17 July 1997, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning lawyer and City Ombudsman of San Calixto José Estanislao Amaya Páez. It has been reported that Mr. Amaya Paéz had received a death threat from a paramilitary group called "Autodefensas del Catatumbo" which ordered him to leave the region within eight days. According to the information received, this paramilitary group is linked with the Colombian security forces.

50. On 1 August 1997, the Special Rapporteur transmitted a communication to the Government concerning lawyers José Luis Marulanda Acosta and Augusto Zapata Rojas. It was alleged that members of the Colombian military had submitted a report stating that both men were active members of the National Liberation Army (ENL). Reportedly, this was based on Mr. Marulanda Acosta's defence of Jhon Jairo Ocampo Franco, who was arrested and charged with being a member of the ENL. The source further alleged that Mr. Maralunda Acosta and Mr. Zapata Rojas, who merely shares an office with Mr. Marulanda Acosta, began having problems following the former's refusal to allow his client to be photographed with allegedly confiscated material. The photographs were to be sent to the national press.

51. On 17 November 1997, the Special Rapporteur sent an urgent appeal concerning lawyers Alirio Uribe Muñoz, Rafael Barrios Mendivil and Miguel Puerto Barrera, members of the "José Alvear Restrepo" lawyers' collective. Allegedly, the lawyers had suffered threats and harassment for several months. It was reported that Alirio Uribe Muñoz, President of the collective, was accused of supporting a wing of the ENL. The accusations were reportedly made in a report submitted by the army to the Bogotá regional prosecutor's office. It was also reported that Miguel Puerto Barrera, legal representative of the victims, was declared a military objective by the army. Finally, Rafael Barrios Mendivil, legal representative of the families and survivors of the Caloto massacre, had been reportedly subjected to constant tailing, harassment and threats.

Communications from the Government

52. On 1 October 1997, the Government sent a reply to the communication transmitted by the Special Rapporteur concerning lawyers Luis Marulanda Acosta and Augusto Zapata Rojas. According to the Government, the Fiscalía Regional Delegada of the city of Armenia is investigating Jhon Jairo Ocampo for charges of rebellion. The investigation started on 7 February 1997 and on 22 April the Prosecutor ordered the arrest of Jhon Jairo Ocampo. On 9 May the Prosecutor decided to release him. The investigation is currently in the examination proceedings, collecting evidence, in order to clarify the facts.

53. On 3 December 1997, the Government provided additional information with regard to the above-mentioned case. The Government informed the Special Rapporteur that according to a report submitted by the judicial attorney (Procurador Judicial en lo penal) in the city of Armenia, there were no irregularities in the investigation of the case of Jhon Jairo Ocampo that justify the appointment of a Special Agent; however, the judicial attorney ordered special surveillance to the process. Furthermore, the Government informed that the complaint made by lawyer José Luis Marulanda Acosta was at that moment under investigation. On 16 December 1997, the Government of Colombia provided the Special Rapporteur with a reply to his communication dated 16 November 1997 regarding the case of the members of the "José Alvear Restrepo" lawyers' collective. According to the Government, the case had been studied by the competent authorities of the Government. In particular, the Committee on the Regulation and Evaluation of Risks of the Programme of Special Protection for Witnesses and Threatened Persons of the Human Rights Administrative Special Unit of the Ministry of Interior had ordered the adoption of the measures for protecting the office and the integrity of the members of the collective. These security measures, located in the "Edificio de Avancia" in the city of Santa Fe in Bogotá, included the installation of a reinforced security door at the entry level, a closed-circuit security system and an entry system for staff involving an electronic keyboard and magnetic cards. Moreover, a seminar on self-protection was organized for the members of the collective. Rafael Maria Barrios, Reynaldo Villalba and Pedro Julio Mahecha had been given bulletproof vests and cellular telephones in which the telephone numbers of the security branch of the Ministry of Interior had been programmed in the event that an emergency arose. The Direction of Protection of the Administrative Department of Security was requested to undertake a study of threats issued against Mr. Alirio Uribe, Mr. Rafael Barrios, Mr. Barrios Mendivil and Mr. Puerto Barrera and to evaluate the risks. The Government said that notwithstanding the previous communication, it had not been possible to obtain within the given time detailed information relating to the investigations concerning the mentioned allegations. The Government requested an extension of two months in order to present its observations concerning the allegations made by the members of the "José Alvear Restrepo" lawyers' collective.

54. On 23 January 1998, the Government provided the Special Rapporteur with the requested additional information. According to the Government, the Public Prosecutor's Department had stated in a recent communication that the Terrorism Unit of the Bogotá Regional Prosecutor's Office confirmed that the Unit was not undertaking any proceedings against Mr. Uribe Muñoz, Mr. Puerto Barrera or Mr. Barrios Mendivil on the contrary, the Unit was investigating the threats against them. In addition, the Special Rapporteur was informed that the Protection Department had undertaken the study of the level of risk and intimidation of the three men. The study was being considered by the Committee on the Regulation and Evaluation of Risks, and the Special Rapporteur would be provided with the Committee's conclusions.

Observations

55. The Special Rapporteur thanks the Government of Colombia for the responses provided. However, he notes that the replies dated 1 October 1997, 3 and 16 December 1997 and 23 January 1998 do not address the Special

Rapporteur's concerns about lawyers Dr. Marulanda Acosta and Dr. Zapata Rojas. The Special Rapporteur will continue to monitor developments in the three complaints.

Croatia

Communication to the Government

56. On 4 November 1997, the Special Rapporteur sent a communication to the Government containing general allegations concerning the judiciary in Croatia. According to the information received, several judges were reportedly relieved from their posts following decisions by the State Judicial Council which were alleged to have been motivated more by the national origin or political views of the judges than by their professional competence. The President of the Supreme Court, Dr. Krunislav Olujic, was reportedly dismissed following a decision of the High Judiciary Council on 4 January 1997 which was alleged to be connected to his determination to work independently of the ruling HDZ political party. Some dysfunctions of the judiciary were also brought to the Special Rapporteur's attention, in particular the pre-selection of judicial candidates by the Minister of Justice. Further, security of tenure is not guaranteed for judges. The Croatian courts have also reportedly experienced difficulties with implementing their decisions, particularly with respect to cases against members of the Croatian army and the police, or where rulings were in favour of non-Croats. It was also reported that the accused's right to have an attorney present during the investigative phase and during an appeal against investigative detention was not always respected.

Communication from the Government

57. On 14 January 1998, the Special Rapporteur received a communication from the Government of Croatia in response to his letter of 4 November 1997. Save for setting out generally the constitutional provisions governing the judiciary in Croatia and stating that the removal of the former President of the Supreme Court was not motivated by political considerations, the issues raised in the Special Rapporteur's letter were not addressed. The Special Rapporteur therefore intends to follow up on the matter.

Cuba

Communications from the Government

58. On 25 February 1997, the Government sent a response to a letter transmitted by the Special Rapporteur on 8 July 1996 concerning the Cuban legislation on the independence of judges and lawyers and the cases of Cuban lawyers Leonel Morejón Almagro and René Gómez Manzano.

59. The Government of Cuba provided information on the reforms of the judiciary since the ending of the previous regime, particularly the law that abolished the Emergency Tribunals and the Criminal Division of the High Court. Both institutions then had the power to impose severe punishments summarily without complying with fundamental guarantees for the accused and without right of appeal to a higher tribunal. The Government further explained that the principle of the independence of the judiciary is enshrined in the

Constitution and in the 1990 Law on the Tribunales Populares. Decree-Law 81 of 1984 provides, inter alia, that "the exercise of the legal profession is free" and that lawyers are independent and accountable only to the law. Article 5 of Decree-Law 81 defines the Organización Nacional de Bufetes Colectivos (National Organization Of Collective Law Offices) as a public interest professional legal entity, autonomous and national, whose membership is voluntary and which is regulated by the law and its own agreements and provisions.

60. The Criminal Procedure Law of Cuba contains provisions with regard to the functions of lawyers, including members of the Organización Nacional de Bufetes Colectivos. Regarding the latter, the law states, inter alia, that disciplinary measures against the members of the organization may be appealed to the highest levels and that disciplinary sanctions may be applied by the courts against legal professionals for professional misconduct in the performance of their functions.

61. In addition, the Government informed the Special Rapporteur that the freedom of association and of speech of lawyers is recognized in articles 53 and 54 of the Constitution and, for the members of the Organización Nacional de Bufetes Colectivos, in article 34 of its Regulations. Moreover, Decree-Law 81 states that lawyers may organize and conduct legal literacy programmes for the public.

62. The Government questioned the motives of the source who complained to the Special Rapporteur and suggested that he establish clear rules of admissibility for allegations. As an example, concerning the case of lawyer Leonel Morejón Almagro, the Government explained that he had been expelled by the Organización Nacional de Bufetes Colectivos because of repeated and serious failures to carry out his professional duties, thereby harming both his clients and the prestige of the organization. As provided for by law, Mr. Morejón had appealed to the Minister of Justice, alleging that although he had made mistakes, those were due to the number of cases with which he had to deal and to his weakness with respect to certain details. The Minister upheld the expulsion.

63. Regarding the case of Mr. Gómez Manzano, the Government explained that his request to create a lawyers' association was rejected because it would have had similar objectives to those of the existing Unión Nacional de Juristas de Cuba, which would be contrary to Cuban law.

Observations

64. The Special Rapporteur thanks the Government for its detailed response. From its response, it does appear that the Government, through the Minister of Justice, has some control over disciplinary sanctions on lawyers. Principle 28 of the United Nations Basic Principles on the Role of Lawyers provides: "Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review" (emphasis added). The fact that

Mr. Leonel Morejón Almagro appealed to the Minister of Justice and the Minister dismissed the appeal, indicates that there may not be a provision in the legislation for an independent judicial review as provided in principle.

Egypt

Communication to the Government

65. On 23 September 1997, the Special Rapporteur sent an urgent appeal concerning lawyers Mohammad Sulayman Fayyad and Hamdi Haykal, arrested on 17 June 1997 in the town of Banha for criticizing, in a public gathering, Law 96 of 1992. They were reportedly charged with possession of printed material critical of Law 96, which allows landowners to evict farmers, and with inciting farmers to oppose the Law, although by peaceful means. According to the information received, they were tortured in Tora penitentiary by security officers. They were then transferred to the High Security Prison in Tora. The authorities did not inform their lawyers or families of their whéreabouts until 19 June and, even then, they were unable to receive visits due to a ban forbidding visits by lawyers and relatives to detainees. The Special Rapporteur was also informed that on 9 August 1997, Sayyed Ahmad al-Tokhi, a lawyer from the Egyptian Organization of Human Rights (EOHR), was arrested at Cairo airport allegedly in connection with his peaceful activities in opposition to Law 96. For two days he was held in three different detention centres without charges being brought against him. According to the source, he was finally interrogated on 11 August in the presence of defence lawyers at the State Security Prosecution Office. Before being transferred to Mazra'at Tora prison, where he was reportedly detained at the time of the intervention, he was held in al-Mahkoum prison in Tora where he was said to have been ill-treated. He has been charged with verbally promoting ideas which contradict the fundamental principles of the ruling regime.

Communication from the Government

66. On 15 October 1997, the Government provided the Special Rapporteur with a reply to his urgent appeal, in which it confirmed that all the rights of the persons in question were respected and that their cases were being dealt with in an orderly manner according to the law. Regarding the cases of Mr. Mohamed Soliman Fayed and Mr. Hamdy Heikal, the Government informed the Special Rapporteur that both persons had conducted premeditated and organized agitation instigating farmers to oppose by force the implementation of the new Law 96 of 1992 on tenancy agreements in regard to agricultural land. According to the Government, both persons have been arrested by order of the Public Prosecutor following a search of their residence where printed material calling for opposition by force to the Law was found. The Government mentioned that while the two persons were imprisoned in the Tora penitentiary, they attacked some military police working in the prison. Those incidents were investigated. Regarding the case of Mr. Ahmed Altouhky, the Government informed the Special Rapporteur that he was arrested on 9 August 1997 at Cairo airport trying to escape an arrest warrant issued by the Public Prosecutor for the same reasons mentioned in the case of Mr. Fayed and Mr. Heikal. The Public Prosecutor had begun an investigation, but had not then reached a final decision. According to the Government, nothing in the facts related to the

three cases was connected to their profession as lawyers and all of their rights during investigation and detention were fully respected.

Observations

67. The Special Rapporteur thanks the Government for its response.

France

Communication to the Government

68. On 7 November 1997, the Special Rapporteur sent a communication to the Government of France regarding the strike on 6 November 1997 in which most of the 33,000 French lawyers participated in order to draw the attention of the Government to the lack of human and financial resources of the French justice system, resulting in a large backlog of cases in the courts. In addition, the Special Rapporteur requested the Government to provide him with the latest developments relating to the draft reform of the judicial system in France.

Observations

69. To date, the Government has not responded.

Georgia

Communication to the Government

70. On 23 September 1997, the Special Rapporteur sent a communication to the Government expressing concern about allegations of interference of the executive in political and criminal trials and politically sensitive trials. It was also reported that judges practise self-restraint in order to retain their jobs and that sentences in politically sensitive cases are handed down by the Supreme Court of Georgia acting as a court of first instance. According to the source, the sentences of this Court are considered to be final and the right of appeal to a higher court is denied. The Special Rapporteur was also informed that the April 1995 amendments to the Criminal Code substantially restrict the rights of lawyers in defending their clients. According to the source, certain amendments have the effect of limiting a defence lawyer's access to important documents.

Communications from the Government

71. On 19 January 1998 the Government responded by sending a copy of a letter dated 16 January 1998 addressed to the High Commissioner for Human Rights. The Government indicated that Georgia had adopted a new democratic Constitution on 24 August 1995 and, pursuant to this Constitution, on 13 July 1997 the Parliament of Georgia adopted the Basic Law on courts of general jurisdiction. The Government stated that the Basic Law completely transformed the status of courts in the country as regards their relations with other bodies of authority. The Government had sought the comments of the High Commissioner on the Basic Law.

Observations

72. Georgia obviously is going through a period of transformation from the previous Soviet system to democracy. The Government admits that under the previous system there were many ways to influence the courts.

73. The Special Rapporteur thanks the Government for its response and will study the materials on the new Basic Law and express his comments in due course.

India

Communications to the Government

74. On 21 February 1997, the Special Rapporteur sent a communication to the Government of India in which he requested to be advised of the status of the investigations concerning the kidnapping and killing of Mr. Jalil Andrabi, lawyer and human rights activist. This case was the subject of an exchange of correspondence between the Special Rapporteur and the Government in 1996 and was mentioned in his 1997 report (E/CN.4/1997/32, paras. 110-115).

75. On 29 May 1997, the Special Rapporteur transmitted a communication to the Government concerning Jasved Singh, a human rights lawyer who had allegedly been threatened and harassed by the police. He was reportedly accused of harbouring terrorists and his home had been raided more than 100 times. According to the source, Jasved Singh received such treatment because of his defence of suspected terrorists and his human rights work. In the same communication, the Special Rapporteur recalled his previous letters concerning the kidnapping and murder of Jalil Andrabi and requested the Government to provide him with information on the current status of the investigations.

76. On 13 June 1997, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning T. Puroshotham, lawyer and joint secretary of the Andhra Pradesh Civil Liberties Committee, who was reportedly attacked on 27 May 1997 by police in plain clothes and sustained serious head injuries. According to the source, the "Green Tigers", a group allegedly established by the Andhra Pradesh Government in concert with the police to counter the activities of human rights defenders, claimed responsibility for the attack.

77. On 1 August 1997, the Special Rapporteur sent a communication to the Government in which he provided additional information on the harassment and intimidation of Jasved Singh. According to the information received by the Special Rapporteur, Jasved Singh resides in the State of Punjab and practises in the subregional courts. He is also a member of a local civil liberties organization. He allegedly began to have difficulties in 1987 when he was charged with terrorist and disruptive activities. He was released after 33 days of detention and acquitted of all charges. The source also alleged that in 1990 Mr. Singh was arrested for murder, jailed for 20 days and subsequently acquitted. According to the source, Jasved Singh was also aggressively questioned for his defence of two Sikh men charged with the murder of Pisham Prakesh, the President of the Congress in Khanna district.

78. On 23 September 1997, the Special Rapporteur transmitted a communication to the Government concerning the harassment of three lawyers and a judge. According to the information received, a team of armed personnel of the 30th Assam Rifles, along with one Manipur police constable, searched the home of lawyer Thokchom Ibohal Singh on 4 April 1997. It was further alleged that he was accused of being a sympathizer of an underground organization and of giving financial assistance to it, although no evidence was found. The Special Rapporteur was also informed that lawyer Khaidem Mani Singh, Vice-President of the Manipur Bar Association, was arrested with his wife on the evening of 31 March 1997 and charged with harbouring armed opposition leaders. It was also reported that lawyer Chongtham Cha Surjeet's house was raided on 4 July 1997 by a team of the Indian Army and the Rapid Action police Force of the Manipur Police. Finally, the Special Rapporteur expressed his concern about allegations received concerning Judge W.A. Shishak, a judge of the Gauhati High Court, whose house was raided on 10 December 1996. According to the source, the assault was related to his activities in defence of human rights in Manipur.

79. On 24 September 1997, the Special Rapporteur sent an urgent appeal to the Government of India concerning the lawyer Ravi Nair, Executive Director of the South Asian Documentation Centre, based in New Delhi. According to the source, Ravi Nair received two phone calls from a policeman, who identified himself as Deputy Commissioner of Police of the Delhi police, threatening him with arrest and physical injury.

Communications from the Government

80. On 4 July 1997, the Government provided a reply to the Special Rapporteur containing additional information on the case of the human rights lawyer Jasved Singh. In the same letter, the Government enclosed information regarding the death of Jalil Andrabi. According to the Government, the Division Bench of the Jammu and Kashmir High Court of Srinagar took into consideration the investigation report of the Special Investigation Team and issued an order on 10 April 1997 requesting efforts to secure the presence for questioning of a Territorial Army officer, Avtar Singh. The authorities concerned were also requested to collaborate with the Special Investigation Team.

81. The Special Rapporteur received a reply from the Government of India on 29 September 1997 with respect to the case of Ravi Nair. The Special Rapporteur was informed that the Permanent Mission of India to the United Nations Office at Geneva had gotten in touch with Mr. Nair regarding his alleged harassment and that the National Human Rights Commission was currently seized of the matter. According to the Government, inquiries were being conducted into the incident.

82. On 9 October 1997, the Government provided a reply to the urgent appeal sent jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding lawyer T. Purushottam. According to the Government, T. Purushottam was attacked by some unknown individuals on Station Road, Mahbubnagar. The Station House Officer of the nearest police station took T. Purushottam to the government hospital immediately for treatment and also recorded his statement. The Government informed the Special Rapporteur

that the Additional Superintendent and the Superintendent of Police of the area also visited T. Purushottam at the hospital to ascertain the facts of the case. Efforts were currently being made to identify the persons responsible for the assault.

83. On 23 October 1997, the Government responded to the Special Rapporteur regarding a raid allegedly conducted by security forces on the house of the Judge W.A. Shishak of the Giwahati High Court. According to the Government, the incident was brought to the attention of the Chief Justice of the Guwahati High Court who immediately issued orders for a formal petition impleading the Union of India and the State Government of Nagaland to be registered. The army officers concerned were directed to file their reply within a week and, in the meantime, the Superintendent of Police of Dimapur gave instructions to visit the spot and inquire into the matter. The hearing of the case took place on 7 April 1997 and affidavits were filed by army and police authorities. The Guwahati High Court concluded that the incident was a result of confusion caused by the fact that the building was not the official residence of Justice Shishak and that one of the members of his staff looked like á suspect for whom the security forces were searching. The Government informed the Special Rapporteur that the information regarding other allegations raised in the communication would be provided to him as soon as it was received from the concerned officials.

Observations

84. The Special Rapporteur would like to thank the Government of India for its replies and welcomes the positive steps taken in the cases. However, he remains concerned about the frequent allegations he has received of harassment and intimidation of lawyers by the police and security forces. He requests the Government to investigate systematically, thoroughly and impartially these allegations, to identify those responsible and bring them to justice.

85. Regarding the case of Jalil Andrabi, the Special Rapporteur, while expressing his appreciation for the investigations into the death of Jalil Andrabi, yet remains concerned over the delay in concluding the investigation.

Indonesia

86. On 12 June 1997, the Special Rapporteur sent a letter to the Government of Indonesia with regard to previous allegations transmitted on 23 October 1996 concerning Mochtar Pakpahan and Banbang Widjojanto. The Special Rapporteur was informed that on 25 October 1996, a Supreme Court panel presided by Chief Justice Soajono overturned the acquittal of Mr. Pakpahan ordered previously by another Supreme Court panel presided by Justice Adi Andojo on 29 September 1995. The process by which this reversal took place was by means of "judicial review" pursuant to article 263 of the Indonesian Criminal Procedural Code which states, inter alia, "regarding a judicial decision that has been made, except one that exonerates an accused of all his liability, the person convicted or his beneficiaries may apply for a review of the decision to the Supreme Court." It was alleged that it was the first time

in the legal history of Indonesia that that provision of the Code was invoked by the prosecutor to apply for review of an acquittal ordered by the Supreme Court.

87. It was further alleged that when the Supreme Court handed down its decision, on 25 October 1996 (about five days before the retirement of the Chief Justice), overturning its previous decision, Mr. Pakpahan was not present in court. He was not notified of the matter. He was notified of the decision about a month after it was made. There were allegations of rivalries within the judiciary, particularly involving the Chief Justice and Justice Adi Andajo, who had presided over the earlier court.

88. In the same letter, the Special Rapporteur also sought a response from the Government regarding allegations that Banbang Widjojanto, a lawyer and defence counsel for Mr. Pakpahan, had been threatened by the prosecution to be called as a witness to testify against his own client.

89. The Special Rapporteur further sought the Government's response to allegations that he had received regarding lawsuits initiated by Mrs. Megawati Soekarnoputri against the Government after her purported removal as the democratically elected leader of Partai Demokratik Indonesia (PDI). It was alleged that judges had received direction from government officials on how the lawsuits should be dismissed on technical grounds, etc.

90. Finally, in the same letter the Special Rapporteur sought the Government's response to his request to carry out an <u>in situ</u> mission to inquire into the state of judicial independence in Indonesia.

91. The Permanent Mission of Indonesia to the United Nations Office at Geneva responded to the Special Rapporteur in a communication dated September 1997. The Government requested that its communication be submitted <u>in toto</u> to the fifty-fourth session of the Commission on Human Rights. Although it is not the practice of the Special Rapporteur to incorporate in his reports the full text of communications he receives, owing to space constraints, in this particular case, as the allegations were serious, the Special Rapporteur has decided to accede to the request of the Government.

92. Following is the text of the Government's reply:

"I. Mochtar Pakpahan

Regarding the case of Mr. Pakahan, the Indonesian Courts have supplied the following clarifications:

A. During the trial at the Central Jakarta District Court, he was found guilty of publicly inciting the people, both verbally and in writing, to infringe the law or to defy the public authority, or to commit punishable acts sanctioned by article 160 of the Indonesian Penal Code.

B. Chronology of the legal proceedings against Mr. Pakpahan:

1. On 7 November 1994, the Central Jakarta Court of First Instance sentenced Mr. Pakpahan to three years imprisonment for violating Articles 160 and 64 (1);

2. On 16 January 1995, the Jakarta Court of Second Instance increased his sentence to four years for the same offence;

3. On 29 October 1995 the Supreme Court of appeals cleared him of all charges;

4. On 6 January 1997, following a request by the Attorney-General for a review of the case, the Supreme Court reinstated the four-year sentence with immediate effect.

C. The Attorney-General decided to submit a request for a review based on the dispositions of Articles 263 (1), 263 (2)(c) and 263 (3) of the Code of Criminal Procedure (KUHAP) as follows:

Article 263 (1):

> 'A defendant or his heir, are entitled to appeal to the Supreme Court against a verdict which has acquired permanent legal force, unless he has been acquitted and the charges against him have been dropped. This article is to the benefit of the defendant or his heir. It goes without saying that the defendant of his heir are not going to appeal for review if there has been an acquittal. However, this article does not expressly preclude the Attorney-General from requesting for a review after an acquittal has been pronounced.'

Article 262 (2):

> 'The request for a review shall be made on the basis of the following: ...
>
> ... (c) If a decision clearly shows a mistake on the part of the judge or is clearly wrong.'

Article 263 (3):

> 'For the same reasons as intended in section (2), a request for a review can be submitted with regard to a court's decision which has acquired permanent legal force, if in the decision an allegation which has been proved is not subject to criminal proceedings.'

This last article is clearly intended for no party other than the Attorney-General.

In this connection, the Supreme Court judge made several mistakes in his review of Mr. Pakpahan's case, as follows:

1. The panel of judges only considered the case in the context of the prevalent social transformations in Indonesia while overlooking the existing law, which should be upheld;

2. The panel of judges interpreted the law in the context of the social transformations in the country to justify the wrongdoings of the defendant and cleared him of all the legal charges against him, rather than considering the social factor as one of many dimensions of the law;

3. The panel of judges focused their decision on the prevalent social problems rather than the legal system;

4. The judges did not consider the law as the basis of their verdict, but instead considered it only as a reference in drawing their conclusion;

5. In their considerations, the judges stated that legal Acts were not the only legal source of the law and that there were other sources which were more important. However, they failed to specify what more important sources there were on which they based their verdict;

6. The panel of judges stated that the defendant, Mr. Pakpahan, was not responsible for the loss of life and material as a result of his actions;

7. Clearing Mr. Pakpahan of his criminal conduct would be bound to encourage workers around the country to organize unlawful strikes;

8. The verdict was not in line with another decision of the Supreme Court which convicted Mr. Amosi Telaumbanua, one of the men who acted under the direct instruction of Mr. Pakpahan in the related case, and the fact that the judge chairing the panel in the Pakpahan case also sat on the same panel which tried Mr. Amosi Telaumbanua.

D. The Attorney-General based his request for a review on the following additional considerations:

1. Principle of balance: The right to review a case should not only be accorded to a defendant or to his/her heir, but should also be accorded to the Attorney-General;

2. Principle of public interest: According to Article 49 of Act of Parliament No. 5/1986 on the State Administration Court, by public interest one should understand the interest of the nation or the state, or the communal interest, or the interest of the state development programme according to the law. According to the Act of Parliament No. 5/1991 on the Attorney-General, public interest should be understood to mean the interest of the nation, the state and the community.

3. Principle of Common Law: Tap MPR (decision of the People's Consultative Assembly) II/MPR/1994 on the GBHN (broad guidelines of state policies) stipulates that a new law is not only created through enactment by the legislative, but also through jurisprudence. In addition, Presidential Decree No. 17/1994 on Repelita VI (five-year development plan), under the subheading 'Law' gives inter alia 'a greater role to the judiciary to develop new laws for the realization of social justice for the people through jurisprudence'.

4. Former Law: The 'Reglement op de Strafvordering' and Supreme Court regulations No. 1/1969 and No. 1/1980 state that the Attorney-General may submit for a review of a court's verdict which has acquired permanent legal force.

E. In conclusion, the decision of the Supreme Court to overturn its former decision which cleared Mr. Pakpahan of all legal charges and to reimpose the four-year sentence previously handed down by the High Court, does not violate Article 263 of the Indonesian Code of Criminal Procedure, as wrongly suggested in your communication, but instead finds its legal basis in the said article.

F. It is not true that either Mr. Pakpahan or his legal representative were not notified of the decision promptly enough to enable them to challenge the ruling, despite their request for a review of the Supreme Court decision, which is still being examined to date.

G. The judiciary concerned has confirmed that throughout the entire trial of Mr. Pakpahan, the relevant provisions of the Indonesian Code of Penal Procedure were fully observed by the panel of judges. Contrary to the allegations, the defendant and his legal counsel, as well as all the witnesses were given a fair hearing, and the rights of all parties were respected. The panel of judges carried out their task with all the independence guaranteed by the Indonesian law and throughout the trial, were entirely free to act according to their own convictions and sense of justice. At no time and under no circumstances was there any interference from the executive in the proceedings.

II. Bambang Widjojanto

The allegation to the effect that Mr. Bambang Widjojanto, defence counsel for Mochtar Pakpahan, was threatened with being forced to testify against his own client is totally without foundation. The investigation confirmed the absence of any corroborative evidence to support the allegation and Mr. Pakpahan's counsel was fully able to discharge his duties on behalf of his client. In fact, Mr. Widjojanto continues to represent Mr. Pakpahan, who has appealed for another review of his case against the decision of the Supreme Court, which rejected the conclusions of the first review after the Attorney-General ordered a re-examination of the case.

III. Megawatu Soekarnoputri

Regarding the lawsuits initiated by Megawati Soerkarnoputri against the Government after her purported removal as the elected leader of Parai Demokratik Indonesia (PDI) by decision of the PDI Congress in Medan in June 1996, the clarifications from the judicial authority concerned are as follows:

A. In the case No. 229/1996, Mrs. Megawati Soekarnoputri and Mr. Alexander Litaay, in their capacity as Chairperson and General Secretary of the PDI Central Board of the National Congress of 1993 respectively, represented by their legal proxy from the Defending Team for Indonesian Democracy (TPDI), filed against:

1. Fatimah Achmad as the representative of the Congress Committee;

2. Fatimah Achmad as the representative of the Congress Leadership;

3. Soerjadi and Buttu R. Hutapea - in their capacity as General Chairman and Secretary-General of DPP PDI of the Medan Congress;

4. the Minister of Home Affairs;

5. the Commander of the Indonesian Armed Forces;

6. the Chief of the State Police,

all of whom are directly involved in the organization and implementation of the Medan Congress.

B. The charges brought by Mrs. Megawati Soekarnoputri against Soerjadi and some of his colleagues, the Commander of the Indonesian Armed Forces, the Minister of Home Affairs and the Chief of the State Police were rejected by the Central Jakarta District Court on 10 November 1996.

C. The council of judges ruled that the organizing of the PDI Congress was an internal matter of the party which had to be resolved internally without involving the Court. As defendants 1, 2 and 3 were PDI officials, the court was not competent to handle their case. While for defendants 4, 5 and 6 as they were government officials, the court considered that their case should be brought before the Court of State Administration.

D. The Court of Second Instance of Jakarta, in its decision No. 726/PDT/1997/PT.DKI of July 1997, accepted the appeal submitted by Megawati Soerkarnoputri and Alexander Litaay and annulled the decision of the Central Jakarta District Court of

10 November 1996 which had refused to try Megawati Soekarnoputri and Alexander Litaay on the grounds that it had no competence to try the case.

E. In its ruling, the court stated that, in organizing the Medan Congress, defendants 1, 2 and 3 had infringed the Party Statutes of 1994, and that defendants 4, 5 and 6 had broken the law (article 1365 of the Indonesian Private Code) by permitting, supporting, funding and facilitating the Congress which had resulted in the losses and damage caused by the accusers. In this connection, pursuant to Article 2 (1) of Act No. 14/1997 on the Judiciary and Article 50 of the Act No. 2/1986, the Court instructed the Central Jakarta District Court to proceed with the trial of the case.

F. All the accused have appealed for a review of this decision of the Court of First Instance, which is still being examined.

G. In conclusion, the allegation that the judges in charge of the case acted under the direction of a non-judicial element, namely the Government, is totally unfounded since the decision of the Court favoured the accusers against government officials. This fact confirms that there was no inappropriate or unwarranted interference in the judicial process concerning the case of Megawati Soekarnoputri.

Regarding your request for the Government's permission to lead a mission to Indonesia to investigate and report on the state of the independence of judges and lawyers, I very much regret to have to inform you that in view of the Government of Indonesia's present engagement in the preparations for the forthcoming five-yearly session of the highest State body, the People's General Assembly, ahead of the presidential elections of March 1998, the Government would prefer to defer such a visit until a more opportune time. However, may I draw your attention to the fact that the Indonesian Government will, as always, continue to be at your disposal to provide you with any information you may request. As you may be aware, the Government of Indonesia puts high value on the work of all the United Nations human rights mechanisms, including the work of the thematic rapporteurs. In this respect, Indonesia received the visit of the Special Rapporteur on Torture in 1991, the Special Rapporteur on Summary or Arbitrary Executions in 1994 and, in 1995, the highest authority in the field of human rights, the High Commissioner. By the same token, I would also like to reiterate my Government's duty and commitment to ensuring that the independence of judges and lawyers is protected from any unwarranted interference.

I can assure you, Sir, that the independence of the judiciary, guaranteed by the State and enshrined in the 1945 Constitution, as well as all other laws are respected and observed by the Government. Similarly, the Indonesian Act on the Basic Principles of the Judiciary stipulates the principles of a fair and impartial trial and of the presumption of innocence.

Finally, I should like to reiterate the commitment of the Government of the Republic of Indonesia to cooperate fully with all the United Nations human rights mechanisms, including the Special Rapporteur, on the independence of judges and lawyers. It is my Government's sincere hope that this clarification will be submitted in toto to the fifty-fourth session of the Commission on Human Rights."

Observations

93. The Special Rapporteur thanks the Government for its responses. It is not within the mandate of the Special Rapporteur to question the correctness of domestic court decisions. But when such decisions are made by courts or tribunals alleged to be wanting in independence and impartiality, then it falls within the mandate of the Special Rapporteur to inquire into the allegations.

94. The information received by the Special Rapporteur from various sources, whose credibility he has no reason to doubt, and the contents of the Government's communication leave several issues relating to the independence of the courts unanswered. An application by Mr. Pakpahan for a further review before the Supreme Court is pending. It is of concern, however, that he is currently in custody serving his term of imprisonment, despite being in hospital receiving medical treatment.

95. The Special Rapporteur trusts that the Government will facilitate the carrying out by the Special Rapporteur of an in situ mission.

Iran (Islamic Republic of)

Communication to the Government

96. On 2 July 1997, the Special Rapporteur transmitted an urgent appeal, jointly with the Special Rapporteurs on the promotion and protection of freedom of opinion and expression, and on extrajudicial, summary or arbitrary executions, and the Special Representative on the situation of human rights in the Islamic Republic of Iran concerning the writer and editor-in-chief of the monthly Adineh, Faraj Sarkouhi. Mr. Sarkouhi was reportedly a signatory of the 1994 declaration of 134 writers appealing for an end to censorship in Iran. According to the information received, Faraj Sarkouhi was arrested on 7 January 1997 after having been held incommunicado for several weeks in November 1996. Allegedly, he was tried in a closed trial on a variety of charges including espionage, which reportedly carries a mandatory death penalty. It was also alleged that he had not been permitted to appoint a lawyer and that the trial was closed to the public and international observers. According to some sources, a death sentence had been pronounced.

Communication from the Government

97. On 16 July 1997, the Government of the Islamic Republic of Iran provided the Special Rapporteur with a reply to the joint urgent appeal sent on 2 July 1997. According to the Government, Faraj Sarkouhi had left Tehran for Germany in November 1996 and any allegation about his detention during this period was therefore baseless. He was arrested on 2 February 1997 on

charges of espionage and attempting to leave the country illegally. The Government drew attention to the fact that Mr. Sarkouhi had never been tried or convicted and that he will enjoy all legal rights in conformity with due process of law, including the right to a fair trial and the right to a defence lawyer.

Observations

98. The Special Rapporteur thanks the Government for its prompt response.

Kenya

Communications to the Government

99. On 1 August 1997, the Special Rapporteur transmitted to the Government of Kenya a communication concerning the murder of lawyer S.K. Ndungi on 22 April 1997. According to the source, Mr. Ndungi frequently undertook criminal defence work for clients charged in significant armed robbery cases like those implicated in the February 1997 robbery of the Standard Chartered Bank on Moi Avenue in Nairobi in which 96 million Kenya shillings were stolen. In this connection, Mr. Ndungi had reportedly accused members of the police force of taking some of the recovered stolen money. Furthermore, it was alleged that Mr. Ndungi discovered evidence incriminating either his own clients, the police, or both. Mr. Ndungi was reportedly followed by unidentified persons in an unmarked car for some time before his death. The source expressed concern that Mr. Ndungi could have been murdered because of his professional activities.

100. On 19 August 1997, the Special Rapporteur transmitted to the Government of Kenya a communication concerning the independence of the judiciary in Kenya. He drew the Government's attention to the fact that the judicial system was under-funded and that the President of Kenya made "presidential comments" publicly predicting the outcome of pending cases. Pursuant to one such comment, former Chief Justice Hancox reportedly issued a circular to all magistrates ordering them to follow the President's directive. Further, it was alleged that sensitive political cases were not allocated to judges who are regarded as being either pro-human rights or completely independent. In addition, the Special Rapporteur received allegations that lawyers supporting human rights or opposition parties were harassed and economically sanctioned. In this regard, lawyers suffered excessive tax demands and they often received threats, were summoned to the police station for questioning and were asked to surrender clients' files. The Special Rapporteur also mentioned the following specific cases:

(a) Regarding the trial of Koigi Wa Wamwere, presiding Chief Magistrate Tuiyot was reportedly biased in favour of the Government because he made, inter alia, numerous unwarranted interventions in the defence's case and denied defence counsel's request for a trial record;

(b) Concerning the case of lawyer Mbuthi Gathenji, it was reported that he had been arrested, detained and harassed due to his activities as a lawyer. Mr. Gathenji was retained to act on behalf of victims of violence which had occurred in 1993 in the Western and Rift Valley provinces and in

pursuit of a civil action against those believed to be responsible. Mr. Gathenji took a number of statements by members of the armed forces which allegedly implicated certain government officials;

(c) Concerning lawyer Wang'ondu Kariuki, it was alleged that Mr. Kariuki was arrested and charged with belonging to an illegal guerilla organization referred to as the February the Eighteenth Movement. According to the source, Mr. Kariuki signed a confession under torture, which he later withdrew;

(d) It has also been reported that the office of Kituo Cha Sheria, a legal advice centre, was firebombed on one occasion and threatened with burning;

(e) The Law Society of Kenya was reportedly facing lawsuits challenging the constitutionality of its existence. The Society has stood up for judicial independence and human rights in Kenya.

Communication from the Government

101. On 8 October 1997, the Government of Kenya provided the Special Rapporteur with a reply to the urgent appeal sent on 1 August 1997 with regard to the killing of lawyer S.K. Ndungi. The Government transmitted a copy of a press statement issued by the Attorney-General of the Republic of Kenya on the investigation into the case according to which a first investigation report failed to identify the killer(s). Following further investigations on 11 September 1997 a second report was issued which again did not identify the culprit. The Attorney-General then requested the Director of Public Prosecutions to place the investigation file before the Chief Magistrate in Nairobi, who would appoint a senior member of staff to lead a public inquest.

Observations

102. The Special Rapporteur would like to thank the Government of Kenya for its prompt response and welcomes the positive steps taken in the case of S.K. Ndungi. In this regard, he wishes to be kept informed of the latest developments in and the result of the investigation.

103. The Special rapporteur remains concerned over the number of allegations received with regard to the harassment of lawyers and the lack of independence of the judiciary in Kenya.

Lebanon

Communication to the Government

104. On 19 August 1997, the Special Rapporteur sent a communication to the Government of Lebanon regarding lawyer Dr. Mohammed Mugraby. According to the source, Dr. Mugraby had been threatened and intimidated in connection with his activities in defence of human rights. On 23 September 1994, Dr. Mugraby had reportedly received a summons from the Assistant Military Prosecutor, Mr. Mouyasser Shuker, to explain his defence in a military court of George Haddad, a social activist and an alleged victim of torture. It was

furthermore reported that the Beirut Bar Association had rejected a case submitted to it by the Ministry of Defence wherein Dr. Mugraby had been charged with defaming the Government of Lebanon. In that case, it was alleged that the Government had intercepted a fax sent by Mr. Mugraby which discussed the human rights violations suffered by his clients, and that three appeals had been brought by the Public Prosecutor to reverse the decisions of the Beirut Bar. It was also reported that the hearings on the appeal were not in accordance with the Lebanese Code of Civil Procedure, and that Dr. Mugraby was neither informed of the appeal hearing nor was he served with a summons or any legal papers, including the decisions being appealed and the petition of appeal. Moreover, it was reported that the presiding judge did not want to listen to the requests of Dr. Mugraby and had directed the record to state that Dr. Mugraby had not answered the appeal.

Observations

105. To date the Government of Lebanon has not responded.

Malaysia

106. In his third report to the Commission, the Special Rapporteur drew attention to a number of lawsuits commenced in the Malaysian courts for defamation arising from an article entitled "Malaysian Justice on Trial" (E/CN.4/1997/32, paras. 123 ff). Among the 14 lawsuits claiming in total MR9 40 million, 4 are against the Special Rapporteur for a total of MR 280 million.

107. In the first of the lawsuits against the Special Rapporteur undertaken by two corporations, the High Court of Malaysia in Kuala Lumpur, on 28 June 1997, dismissed with costs the Special Rapporteur's application to strike out the action on the grounds of the immunity from legal process enjoyed by the United Nations. The Court directed him to file his defence to the action within two weeks, refusing a stay of execution pending appeal. An application to the Court of Appeal for stay of execution was turned down by the President of the Court of Appeal sitting as a single judge.

108. The Special Rapporteur filed his defence to the action on 11 July 1997. On 20 and 21 August 1997, the Special Rapporteur's appeal to the Court of Appeal was heard by three judges. On 20 October, the Court of Appeal, in a written judgement, dismissed the appeal with costs.

109. The Special Rapporteur has since applied to the Federal Court, which is the final appellate court, for leave to appeal to that Court. The hearing on that application has been fixed for 16 February 1998.

110. The Special Rapporteur's applications to strike out the second and third suits have been stayed pending the outcome of the decision of the Federal Court on the leave of application in the first suit. His application to strike out the fourth suit is set for hearing on 3 March 1998.

111. The remaining 11 suits against others quoted or referred to in the impugned article are pending with interlocutory applications filed in court.

112. In his third report, the Special Rapporteur also referred to the allegations that the Attorney-General of Malaysia was proposing to amend the Legal Profession Act 1976 and expressed concern that if such a proposal was acted upon, the independence of the legal profession would be adversely affected (paras. 130 ff). The Government, in a communication dated 3 March 1997, assured the Special Rapporteur, inter alia, that the Legal Profession Act would not be amended without consulting the Malaysian Bar.

113. In another development, on 4 November 1997, the Special Rapporteur wrote to the Permanent Representative of Malaysia to the United Nations Office at Geneva inquiring into disturbing information received by the Special Rapporteur. He was informed that a circular letter dated 16 June 1997 was addressed to about 14 governmental departments directing them not to send any legal work to the three named law firms on grounds that they were "anti-government". These three law firms happen to be the largest in Malaysia. The circular letter emanated from the Ministry of Finance and referred to a Cabinet decision of 19 February 1997.

Communication from the Government

114. On 28 January, 1998 the Special Rapporteur received a letter dated 23 January, 1998 in response to the allegations contained in his letter dated 4 November, 1997. The Government contends, inter alia, that the relationship between the Government and the legal firms to which it gives its legal work is essentially the same as the one between a client and a service provider. As with other clients, the Government has the right to give work to whomever it wishes. The Government acknowledged that it takes full cognizance of principle 16 of the United Nations Basic Principles on the Role of Lawyers and that the three legal firms were free to conduct their business with other clients.

Observations

115. The Special Rapporteur thanks the Government for its response. While the Special Rapporteur appreciates that the Government is free to choose its lawyers, it has not answered why in the circular letter dated 16 June, 1997 the three law firms were characterized as "anti-Government".

116. In his second report to the Commission (E/CN.4/1996/37, para. 162), the Special Rapporteur indicated that he was investigating allegations of manipulation of the judicial system and had gathered information and was continuing to do so. The Special Rapporteur has received serious allegations calling into question the independence and impartiality of the judiciary in certain cases involving certain lawyers representing commercial interests. Owing to the events described in paragraphs 106 through 111 of this report, the Special Rapporteur has not been in a position to effectively follow-up his investigations into these allegations.

Mexico

Communications to the Government

117. On 19 February 1997, the Special Rapporteur transmitted an urgent appeal to the Government of Mexico concerning lawyer Barbara Zamora, a member of the National Association of Democratic Lawyers (ANAD). According to the source, Ms. Zamora was the object of harassment and death threats. It was reported that since December 1996 some members of this association have been the object of harassment. The office of lawyers Jesús Campos Linas, Maria Luisa Campos Aragón and José Luis Contreras, members of ANAD, was broken into. According to the source, ANAD is a group of independent lawyers that undertakes cases involving labour and indigenous rights. It was also reported that in response to the recent wave of harassment, ANAD registered formal complaints with the Office of the Attorney-General, asking for the appropriate investigation and protection. However, as of the date of the appeal, no protection had been provided and no investigation had been initiated.

118. On 19 August 1997, the Special Rapporteur sent a communication to the Mexican Government concerning Judge Julio César Sánchez Narváez. It was alleged that the judge had received death threats from the President of the Upper Tribunal of the State of Tabasco, Javier López y Conde. Reportedly, Javier López y Conde had removed Judge Sánchez from his judicial functions for failing to sign a judicial order of imprisonment against René Brando Bulnes, former local deputy of the Revolutionary Democratic Party (RDP), who was being tried for fraud and who had already been detained. According to the source, during the trial of René Brando Bulnes, when Judge Sánchez ordered his release. Subsequently, the President of the Upper Tribunal requested him to change that decision. The source expressed concern that the threats made against Judge Sánchez might be carried out.

Communication from the Government

119. On 20 October 1997, the Government of Mexico provided the Special Rapporteur with a reply concerning the alleged removal of Judge Julio César Sánchez Narváez from judicial office. According to the Government, the judge was not removed from office, but resigned. According to the Government, Judge Sánchez was seeking to avoid penal responsibility for an alleged crime of fraud for which he is being tried. He appealed at different levels of the courts, but even the amparo appeal was refused on 19 May 1997. The Government stated that Judge Sánchez's complaint before different human rights organizations for alleged violation of his rights is unfounded and that he is seeking impunity for a crime that he committed.

Nigeria

120. The Special Rapporteur notes that he did not receive any response from the Government with regard to the conclusions and recommendations contained in the report on the situation of human rights in Nigeria submitted to the fifty-third session of the Commission on Human Rights (E/CN.4/1997/62 and Add.1). The Special Rapporteur remains concerned about the rule of law

and, in particular, the independence of judges and lawyers. The Special Rapporteur looks forward to reading the report of the Special Rapporteur on the situation of human rights in Nigeria (E/CN.4/1998/62).

Pakistan

Communications to the Government

121. On 23 September 1997, the Special Rapporteur sent a communication to the Government of Pakistan referring to his previous communications dated 17 January 1996 and 28 September 1995 in which he requested to lead a mission to investigate the state of independence of the judiciary and the legal profession.

122. On 16 October 1997, the Special Rapporteur sent an urgent appeal concerning retired Judge Arif Iqbal Hussain Bhatti, who was killed in his Lahore office on 19 October 1997; he had acquitted two Christian brothers accused of blasphemy in a highly publicized case in 1995. According to the source, the judge had received a series of threats from Muslim extremists during the campaign to impose the death penalty on persons convicted of blasphemy. At least seven judges and lawyers who had provided legal aid to people accused of blasphemy were reported to have been targeted in drive-by shootings and assassinations. Among those was Asthma Jahangir, a lawyer and founding member of Pakistan's Human Rights Commission, who had reportedly received regular threats from Muslim extremist groups since the 1995 trial in which she provided legal assistance to the two Christian brothers.

123. On 24 November 1997, the Special Rapporteur transmitted a second urgent appeal to the Government of Pakistan on behalf of Mohammad Akram Sheikh, Senior Advocate of the Supreme Court of Pakistan and outgoing President of the Supreme Court Bar Association, who was allegedly intimidated, threatened with death and physically assaulted by two members of workers for the ruling party, the Pakistan Muslim League (PML). According to the source, the assault was because of Mr. Akram Sheikh's opposition to policy of the PML on the judiciary and the independence of the Bar.

124. In addition, the Special Rapporteur sent an urgent appeal on 28 November 1997 to express his concerns over media reports of the tension between the executive and the judiciary in Pakistan. It was reported that a regional court in Quetta in Baluchistan province had suspended the Chief Justice of Pakistan while the following day, the Supreme Court set aside that decision. The Special Rapporteur also reminded the Government of Pakistan that he had not received any response to his previous letters in which he expressed his wish to undertake a mission to Pakistan.

125. On 11 December 1997, the Special Rapporteur transmitted another urgent appeal on behalf of Mohammad Akram Sheikh, Senior Advocate of the Supreme Court of Pakistan and outgoing President of the Supreme Court Bar Association. Further information was brought to the attention of the Special Rapporteur regarding death threats that Mr. Akram Sheikh had received from three PML workers when he was leaving the Supreme Court building on 18 November 1997 and when he was entering the Supreme Court as an amicus curiae on 19 November 1997. At his request, the police had provided Mr. Akram Sheikh

with a security guard for 3½ days, but no protection was provided thereafter despite repeated death threats. The source also mentioned that the PML Lawyers Forum has demanded, through the press, that Mr. Akram Sheikh be tried for high treason and sedition.

126. The Special Rapporteur remains very concerned at the high level of tension between the executive and the judiciary. In that regard, he issued on 1 December 1997 a press statement to express his grave concern at the constitutional crisis developing in Pakistan. He made reference to the storming of the Supreme Court building by a mob on 28 November, following which the Chief Justice wrote to the head of State concerning the security of the court and of individual judges. The Special Rapporteur expressed his concern that the situation could lead to a possible breakdown of the rule of law in Pakistan.

127. In another development, the Special Rapporteur received information that the Supreme Court had listed for hearing between 19 and 22 January 1998 the contempt of court applications against Mr. Akram Sheikh and some journalists referred to the Special Rapporteur's second report (E/CN.4/1996/37, para. 199), together with the application for contempt against the Prime Minister, which was alleged to have led to the storming of the Supreme Court on 28 November 1997. In view of the implications of these cases for judicial independence, the Special Rapporteur wrote to the Government on 8 January 1998 indicating his interest in observing the hearings before the Supreme Court in Islamabad.

Communications from the Government

128. In letters dated 4 December 1997 and 7 January 1998, the Government responded to the allegations mentioned in the Special Rapporteur's letters dated 16 October and 21 November 1997. With regard to the murder of retired judge Mr. Arif Iqbal Bhatti, the Government reported that it was under investigation and retaliation for the verdict acquitting the two Christian brothers is not ruled out. As for Asthma Jahangir, she is provided with police protection.

129. With regard to Mr. Akram Sheikh, the Government sent, on 25 November 1997, a reply to the urgent appeal transmitted by the Special Rapporteur on 21 November 1997. The Government of Pakistan informed the Special Rapporteur that the version of events described in his urgent appeal did not correspond to the one presented by Mr. Akram Sheikh, which was itself controversial. The Government confirmed that Mr. Akram Sheikh was assisting the Supreme Court as amicus curiae. It indicated that an incident took place during the tea interval and that a complaint was made to the Supreme Court about the conduct of Mr. Akram Sheikh by a lawyer, who claimed to have been mistreated and abused by Akram Sheikh. At the end of that day's hearing, Akram Sheikh made a statement before the Court in which he explained that he had had a harsh exchange of words with one Kh. Muhammad Asif, who had hit him. According to the Government, Akram Sheikh emphasized that he had freely forgiven Mr. Asif and he had never filed a complaint. Furthermore, the Government added that no allegation was made by Akram Sheikh against Senator Pervaiz Rashid and that special security had been provided to Akram Sheikh.

Observations

130. The Special Rapporteur thanks the Government for its response thus far. However, to date, the Government has not responded to the other communications of the Special Rapporteur. The Special Rapporteur remains very concerned over the recent events in Pakistan which bring into question the state of judicial independence in that country.

131. The Special Rapporteur reiterates his interest in carrying out a mission to Pakistan.

Papua New Guinea

Communication to the Government

132. On 19 August 1997, the Special Rapporteur sent a communication to the Government of Papua New Guinea regarding the case of Mr. Powes Parkop, lawyer and Executive Director of the Individual and Community Rights Advocacy Forum. According to the source, Mr. Parkop had reportedly been arrested on 12 May 1997 and charged under article 64 of Papua New Guinea's Criminal Code on two counts of unlawful assembly on 25 and 26 March 1997 at the Papua New Guinea Parliament. The source furthermore alleged that Mr. Parkop had been arrested because of his role in organizing a peaceful demonstration to protest the Government's contract with Sandlines International to provide foreign military personnel in Bougainville.

Observations

133. To date the Government has not responded.

Peru

Communication to the Government

134. On 4 September 1997, the Special Rapporteur sent an urgent appeal to the Government of Peru concerning Judge Elba Greta Minaya Calle. According to the information received, a resolution published on 13 August 1997 authorized the Public Prosecutor to lodge a penal complaint against Elba Greta Minaya Calle for alleged crimes of violence and resistance to the authorities, abuse of authority against officials of the juridical system and terrorism. It was reported that she could be detained at any time and held in detention for 15 days. However, it was reported that due to public outcry, the Government published another resolution which revoked the first resolution and ordered an internal investigation into allegations of professional misconduct by Judge Elba Greta Minaya Calle. The actions taken against her were allegedly related to a habeas corpus writ that she issued ordering the release of Carmen Cáceres Hinostroza, who was said to be in detention.

Communications from the Government

135. The Government of Peru sent two communications relating to the state of emergency. On 8 January 1997, the Government informed the Office of the High Commissioner for Human Rights that on 18 December 1996 a state of emergency

was declared for a 60-day period in the Department of Lima and the Province of Callao and extended for a 60-day period to the Provinces of Coronel Portillo and Padre Abad, in Uyacali Department, and the Province of Puerto Inca, in Huánaco Department. As a consequence of the state of emergency, the exercise of the following rights enshrined in article 2 of the Constitution were suspended in those jurisdictions: right to inviolability of the home (para. 9), right to secrecy and to the inviolability of communications and private documents (para. 11), right to assemble peacefully (para. 12), right not to be arrested without a written warrant giving particulars issued by a judge, or the police in case of a perpetrator caught in the act, and the right to be brought before an appropriate magistrate within 24 hours or upon arrival at destination (para. 24F).

136. On 6 June 1997, the Government informed the Special Rapporteur that on 23 May 1997, the state of emergency was extended for a 60-day period in the following provinces: Oxapampa, in Pasco Department; Satipo and Chanchamayo, in Junín Department; Huancavelica, Castrovirreyna and Huaytara, in Huancavélica Department; Huamanga, Cangallo and La Mar, in Ayacucho Department; Quimbiri and Pichari districts, in the Province of La Convención and Cusco Department; Chincheros, in Apurímac Department; in Huánaco Department (except in the Provinces of Puerto Inca, Yarowilca, Dos de Mayo and in Huacrachuco district, in Marañon Province), San Martín Department, Yurimaguas district in Alto Amazonas Province. The state of emergency in these territories suspended the exercise of the rights enshrined in article 2, paragraph F (9), (11), (12) and (24), of the Peruvian Constitution.

137. The Government provided three replies concerning the case of lawyer Heriberto Benítez who was the subject of a letter transmitted by the Special Rapporteur on 12 December 1996 (see E/CN.4/1997/32, para. 148). In its reply of 13 January 1997, the Government informed the Special Rapporteur that Heriberto Benítez had all the necessary facilities to carry out his functions as a defence attorney on behalf of his clients before all instances of the Supreme Council of Military Justice. The communication indicated that Mr. Benítez had been suspended by the military prosecutor for a three-month period pursuant to a provision of the Military Code of Justice. Mr. Benítez appealed this decision; however, his appeal was dismissed by the Superior Military Tribunal and subsequently he was sanctioned for a five-month period during which he would not be able to represent his clients before military instances.

138. On 28 January 1997, the Government of Peru provided the Special Rapporteur with further information about the situation of Heriberto Benítez, stating that on 20 December 1996, Heriberto Benítez was granted amnesty under Law No. 26700.

139. On 6 February 1997, the Government sent a letter to the Special Rapporteur confirming the amnesty granted to Heriberto Benítez under law No. 26700.

140. The Government provided two replies concerning the attack on the President of the Constitutional Tribunal, Dr. Ricardo Nugent, who was the subject of a communication sent by the Special Rapporteur on 19 November 1996. On 25 January 1997, the Government sent a reply explaining that the attack

which took place was directed not against the President of the Constitutional Tribunal but against an unidentified person whom, according to the police report, criminals were trying to attack and/or kidnap when they saw the police who were present to protect the President of the Constitutional Tribunal. They shot at the policemen, killing two of them and injuring another. The Directorate against Terrorism (DINCOTE) indicated that there was no evidence of a terrorist attack against the President of the Constitutional Court. Information was also provided concerning the protection provided for Dr. Nugent and his family.

141. On 30 April 1997 the Government of Peru sent further information about the attack. According to the police report, a terrorist attack was considered implausible owing to the way and circumstances in which the incident took place, the fact that terrorists use different methods, and that other characteristics are typical of terrorists actions.

142. On 10 September 1997, the Government provided the Special Rapporteur with a reply to his urgent appeal of 4 September 1996 concerning Judge Elba Greta Minaya Calle. The Government explained that the personal liberty of Judge Minaya Calle is not in jeopardy as there is no criminal complaint pending against her. However, an administrative complaint is being investigated by the supervisory authorities of the judiciary relating to an unlawful habeas corpus writ that the judge had issued in favour of Carmen Caceres Hinostroza. The writ was unlawful, according to the Government, because Judge Minaya Calle had issued it without a request by the person concerned or another acting on his/her behalf and without the intervention of the prosecutor, as required by law. Moreover, she had ordered the release of Carmen Caceres Hinostroza, who was under investigation for crimes of terrorism and/or treason, before issuing a judicial decision, which constitutes the crime of abuse of authority, or violence against and resistance to the authorities. On 9 June 1997, the DINCOTE communicated these facts to the Public Prosecutor for cases of terrorism who filed an administrative complaint of professional misconduct against Judge Minaya Calle with the supervisory authorities of the judiciary. At the same time, the Public Prosecutor conveyed these facts to the Ministry of the Interior, requesting that a ministerial resolution be issued authorizing a penal complaint to be lodged against Judge Minaya Calle. On 7 July 1997, the Ministry of the Interior issued a ministerial resolution authorizing the Prosecutor to lodge, on behalf and in defence of the State, a penal complaint against Judge Minaya Calle for the crimes of violence against and resistance to the authorities, abuse of authority, actions against the juridical system, and terrorism. However, the Ministry of Justice, after learning about this resolution, notified the Ministry of the Interior of the existence of the administrative complaint against Judge Minaya Calle; it was necessary to wait until a verdict was reached on that complaint before a penal complaint could be lodged against the judge. Consequently, on 14 August, the Ministry of the Interior issued a ministerial resolution revoking its resolution of 7 July and authorized the Public Procurator to continue with the complaint before the supervisory authorities. Therefore, according to the Government, the personal liberty of Judge Elba Greta Minaya Calle is not in danger, as the resolution of 7 July had been revoked.

Philippines

Communications to the Government

143. On 13 February 1997, the Special Rapporteur sent an urgent action to the Government of the Philippines with respect to allegations of harassment and death threats made against the following judges, human rights lawyers and lawyers working for the Free Legal Assistance Group (FLAG) in the Philippines: Senator Paul Roco, Justice Francis Garchitorena, Justice Jose Balajadia, and attorneys Jose Manuel I. Diokno, Efren C. Moncupa, Lorenzo R. Tanada III, Wigverto R. Tanada Jr., Arno V. Sanidad, Alexander A. Padilla, Theodore O. Te, and Francis P.N. Pangilina. The two judges and the above-mentioned lawyers were reportedly threatened throughout 1996 and subjected to unauthorized surveillance and break-ins of their offices. The ongoing threats and the more recent death threats that they received between 31 January and 5 February 1997 are reportedly connected to their involvement in the Kuratong Baleleng case in which 26 members of the Philippine National Police have been charged in connection with the May 1995 murder of 11 suspected bank robbers. The source believed that it is likely that the threats came from members of the Philippine National Police.

144. The Special Rapporteur transmitted an urgent action on 3 March 1997 concerning death threats made against Senator Paul Roco, Chairman of the Senate Committee on Human Rights and Social Justice. These threats are part of the same series of threatening actions directed at judges and lawyers which were the subject of the previous urgent appeal sent by the Special Rapporteur.

145. On 28 May 1997, the Special Rapporteur sent a follow-up letter to remind the Government that he had not received any response to the two previous urgent actions he transmitted on 13 February and 3 March 1997.

146. The Special Rapporteur sent an urgent action on 4 August 1997, jointly with the Working Group on Enforced or Involuntary Disappearances, on behalf of a lawyer, Nicolas Ruiz, who was abducted with his driver, Jevee Patalita, on 12 July 1997 by armed men dressed in black from a restaurant in San Juan, Metro Manila. Attorney Ruiz's family filed a petition for habeas corpus before the Supreme Court, but the competent authorities are said to have denied having the two men in their custody. It has also been reported that attorney Ruiz had acted as counsel for a person whom the Government allegedly suspects of being involved in illegal activity.

147. On 11 December 1997, the Special Rapporteur sent a follow-up letter to remind the Government to respond to the urgent appeal sent on 4 August 1997 concerning the abduction of Mr. Ruiz and Mr. Patalita.

Communications from the Government

148. On 3 June 1997, the Government provided the Special Rapporteur with a reply regarding the alleged death threats made against the FLAG members and human rights lawyers in connection with their involvement in the prosecution of police officers in the Kuratong Baleleng case (urgent actions dated 13 February and 3 March 1997). The Government informed the Special Rapporteur that the Criminal Investigation and Detective Management of the Philippine

National Police are in the process of conducting the necessary investigation. The Secretary of Justice had also requested the National Bureau of Investigation to conduct a parallel investigation of the case. According to the Government, there were no significant signs of threats against the members of FLAG and the other human rights lawyers owing to the fact that some lawyers did not see the necessity for the protection being offered by the security officers. The Government provided the Special Rapporteur with a copy of a letter dated 30 April 1997 sent to Mr. Ralph Zacklin, Officer-in-Charge of the Office of the High Commissioner for Human Rights, in which it assured him that steps had been taken to protect the physical well-being of the lawyers so that they could perform their duties without fear.

Rwanda

Communication to the Government

149. On 23 January 1997, the Special Rapporteur sent to the Government an urgent appeal jointly with the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions with regard to the trials for genocide and crimes against humanity which are in process in Rwanda. According to the source, provisions embodied in international instruments relating to a fair trial had not been fully taken into account. It was furthermore reported that some of the accused had had no access to a lawyer and that due process was restricted. Some of those accused had been sentenced to death. It was also reported that there had been cases in which the accused were subjected to uncivil treatment before the hearing. Some prosecutors and judges had reportedly received only up to four months' training, and impartiality and the independence of the judiciary in general had reportedly not been guaranteed.

150. On 30 September 1997, the Special Rapporteur sent an urgent communication to the Government of Rwanda with regard to alleged violations of the independence of judges and lawyers in relation to the genocide trials. According to the source, judicial officers had been dismissed or forced to leave the country in fear of their lives because of military and government interference in their duties. Some officials had reportedly been arrested, detained and charged with having participated in the genocide. Others had allegedly been threatened, disappeared or even killed. It was also reported that defendants in the genocide trials had been denied access to files and cross-examination of prosecution witnesses. It was further alleged that judicial and government officials had turned down the right to legal representation and courts had failed to notify defendants of their right to have a lawyer during interrogation and before trial. It was also reported that prosecutors, assistant prosecutors and defence lawyers had been threatened, arrested, disappeared or killed. More specifically, lawyer Murengezi, accused of having participated in the genocide, had disappeared on 30 January 1997 whereas lawyer Munyagishali, also accused of having taken part in the genocide and charged with crimes against humanity, had been arrested in February 1996. It was furthermore reported that there had been no objectivity in the commission de triage, the screening committee set up to recommend the release of detainees in cases of insufficient evidence.

Observations

151. To date the Government has not responded. The Special Rapporteur has had the benefit of reading the status report on the genocide trials to 31 October 1997 issued by the United Nations High Commissioner for Human Rights Field Operation in Rwanda (HRFOR). The Special Rapporteur also had the advantage of reading the report of the Special Representative of the Commission on the situation of human rights in Rwanda submitted to the fifty-second session of the General Assembly (A/52/522, annex).

152. The prevailing political situation in Rwanda has made it difficult for an independent and impartial justice system to function effectively. The lack of adequate resources, both financial and human, is a matter of serious concern. The Special Rapporteur supports the recommendations of both the HRFOR and the Special Representative insofar as they relate to the improvement of the justice system.

South Africa

153. The Truth and Reconciliation Commission is entrusted with the task of gathering evidence from various institutions, organizations, agencies, corporations and individuals in order to understand the role played by them in contributing to the violation and/or protection of human rights during the apartheid era, i.e. from 1 March 1960 to 10 May 1994, and to identify what changes are required to prevent those abuses from happening again.

154. The Special Rapporteur learned that the judges of the South African judiciary were invited to appear before the Commission which was inquiring into a wide range of issues pertaining to the legal system during that period and how the legal system, including individual judges, had contributed to the violations and abuses of human rights. The Special Rapporteur later learned that several judges, including the Chief Justice, the former Chief Justice and the President of the Constitutional Court, refrained from appearing before the Commission. However, many judges submitted written representations. The Chief Justice, the President of the Constitutional Court, the Deputy President and the Deputy Chief Justice, together with the former Chief Justice, submitted a joint written submission. The former Chief Justice, who was the Chief Justice during the relevant period, submitted a separate written submission. He too did not appear before the Commission.

155. In the face of this failure to appear in person before the Commission, a representative of the Commission consulted the Special Rapporteur on the propriety of issuing subpoenas to the judges to compel them to appear before the Commission.

156. The Special Rapporteur advised that it would not be proper to compel the judges to appear before the Commission, however noble its objectives. Subpoenaing the judges for examination by the Commission as to their conduct during the relevant period would amount to reopening cases decided by them, examining the evidence, and generally reviewing the correctness of the decisions. Though judges are accountable, their accountability does not extend to their having to account to another institution for their judgements. That would seriously erode not only the independence of the judges concerned

but also the institutional independence of the judiciary. Further, such compulsion could violate the immunity conferred on judges. Finally, if they are subjected to public examination in the glare of the media, public confidence in the judiciary could be undermined, bearing in mind that prior to 1994 there was no written constitution in South Africa with an entrenched bill of rights for judges to apply and on the basis of which to rule on the legality of legislation. For these reasons, the Special Rapporteur advised that the Commission, having the benefit of written submissions from many judges, could make its findings without having to compel them to appear personally.

Spain

Communication to the Government

157. On 10 November 1997, the Special Rapporteur transmitted to the Government of Spain a communication concerning the trial of the Executive Board of the political party Herri Batasuna. According to the source, some members of the Spanish Government made statements to the press that could affect the independence of the court. Allegedly, the Ministry of the Interior stated to the press on 9 May 1997 that in his opinion the members of the Executive Board of Herri Batasuna should receive prison sentences of more than eight years. Furthermore, the newspaper El Mundo published on 15 September 1997 an article reporting that, according to a source from the Ministry of the Interior, it was expected that two of the three magistrates composing the court would be in favour of the conviction while the other one had not shown a clear position.

Communication from the Government

158. On 4 December 1997, the Government of Spain provided the Special Rapporteur with a reply to the above allegations. The Government stated that the information received by the Special Rapporteur was not correct. Firstly, with respect to a statement allegedly made to the press by the Minister of the Interior, that statement was in fact taken from a radio interview the Minister gave on a variety of subjects. On the issue of the trial of the Executive Board of Herri Batasuna, the Minister said "we are all morally certain that they should be sent to prison not for eight years but for many more. The crux of the issue is that moral certainty is not sufficient; what is needed is legal certainty". Secondly, the Government noted that the information published in El Mundo referred to "some sources", which did not include the Ministry or the Executive. Moreover, the text was "guarded and cautious" as it stated that "everything depended on what happens during the actual trial".

Observations

159. The Special Rapporteur thanks the Government for its response. He notes, however, that the Minister's admitted statement on the radio could be construed as the Executive attempting to influence the court on what it expects the sentence to be.

Switzerland

Communications to the Government

160. On 13 June 1997, the Special Rapporteur sent a joint communication to the Government of Switzerland with the Special Rapporteur on torture concerning the case of Mr. Clement Nwankwo, a Nigerian lawyer and human rights activist and Executive Director of the Lagos-based Constitutional Rights Project, who was arrested in Geneva on 5 April 1997 and detained for five days incommunicado. He was in Geneva to attend the fifty-third session of the Commission on Human Rights and was arrested on suspicion of shoplifting. It was alleged that during and after his arrest, Mr. Nwankwo was severely beaten and kicked by the Geneva police. The Special Rapporteur was also informed that Mr. Nwankwo was denied the right to obtain counsel of his choice and was made to sign the record of the proceedings before the examining magistrate without the presence of his counsel. He was also compelled to sign this document despite the fact that he was unable to read it because it was in French. Finally, he was reportedly tried, convicted and sentenced without a lawyer to defend him in what appeared to be a trial not open to the public, raising questions as to independence and impartiality of the tribunal. Mr. Nwankwo was convicted of theft and sentenced to 20 days' imprisonment and ordered to be expelled from the country. The sentence was suspended.

Communications from the Government

161. On 27 June 1997, the Government sent a response to the Special Rapporteurs to inform them that the Deputy Permanent Representative of Switzerland to the international organizations in Geneva conveyed to Mr. Clement Nwankwo the regrets of the Swiss authorities, including those of the police. According to the Government, the minister in charge of Geneva's Department of Justice, Police and Transports immediately set up an administrative inquiry into treatment Mr. Nwankwo received while in police custody. After receiving the conclusions of the inquiry, he sent a letter to Mr. Nwankwo requesting him to accept the apologies of the Government and informing him that appropriate measures would be taken against the members of the police concerned. The Government also indicated that Mr. Nwankwo could commence civil proceedings against the State for damages.

162. On 28 July 1997, the Government sent additional information regarding the case of Mr. Nwankwo. Copies of judicial decisions along with a response to a questionnaire from the Association for the Prevention of Torture were provided to the Special Rapporteur. The Government informed the Special Rapporteur that an appeal court on 20 June 1997 had acquitted Mr. Nwankwo of the charge of theft but convicted him of the charge of resisting arrest in a public place. However, the administrative inquiry concluded that the treatment that Mr. Nwankwo received was not in conformity with acceptable principles of police behaviour. The Government drew attention to the fact that disciplinary actions would be taken against the four police officers involved in the case.

Observations

163. The Special Rapporteur thanks the Government of Switzerland for its prompt response and welcomes the positive steps taken in the case. However, he noticed that no information was provided with regard to the alleged lack of independence of the tribunal which convicted Mr. Nwankwo in defiance of the principles of due process. Further, the Special Rapporteur views with a certain concern that despite the fact that the appeal court had set aside the conviction of theft imposed on Mr. Nwankwo, the same court found it fit to convict him on the charge of resisting arrest for an offence which he never in law committed. The conviction is particularly disturbing in the light of the apologies extended to Mr. Nwankwo by the Government of Switzerland. The Special Rapporteur has been notified that a further appeal by Mr. Nwankwo to the Court of Cassation is contemplated and therefore refrains from drawing any conclusions from the facts he has thus far received. However, in the light of the Government's apologies to Mr. Nwankwo and its suggestion that he could file a civil suit against the State for compensation, the Special Rapporteur recommends that the Government offer Mr. Nwankwo adequate compensation, thereby avoiding protracted civil litigation and the resultant costs and expense.

Tunisia

Communications to the Government

164. On 1 August 1997, the Special Rapporteur sent an urgent appeal to the Government of Tunisia regarding lawyer Radhia Nasraoui who had reportedly been intimidated and harassed on the night of 29 April 1997 for reasons relating to her work in defence of victims of torture and other human rights violations. According to the source, Ms. Nasraoui's office was broken into, her computer stolen, her phone disconnected and her files interfered with. It was further reported that she had been the victim of similar acts of intimidation in 1994 and in 1995.

165. On 4 December 1997, the Special Rapporteur sent a letter to the Government to request a joint mission to Tunisia with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in order to assess the human rights situation regarding freedom of opinion as well as the independence of judges and lawyers. In this regard, the Special Rapporteur referred to the report of the High Commissioner for Human Rights of July 1996 to the Economic and Social Council (see E/1996/87) following his visit to Tunisia.

Communication from the Government

166. On 30 September 1997, the Government provided the Special Rapporteur with a reply to his letter dated 1 August 1997 concerning the case of Ms. Nasraoui. In its response, the Government informed the Special Rapporteur that the robbery of the office of Ms. Nasraoui was the subject of a judicial investigation based upon a complaint made before the competent authorities on 30 April 1997 by a colleague of Ms. Nasraoui's. Furthermore, the Government stated that the two thieves had been arrested and had admitted to their crimes. They had been sentenced, one to eight months' imprisonment by the

First Instance Court of Tunis, and the other to four months by the juvenile magistrate. However, the Government denied the allegations that Ms. Nasraoui had suffered intimidation and harassment.

Observations

167. The Special Rapporteur would like to thank the Government of Tunisia for its prompt response. In addition, the Special Rapporteur reiterates his interest in visiting Tunisia, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and hopes to receive a positive response to this request.

Turkey

Communication to the Government

168. On 21 May 1997, the Special Rapporteur sent an urgent appeal to the Government of Turkey concerning the following lawyers: Gazanfer Abbasioglu, Sebabattin Acar, Arif Altinkalem, Meral Bestas, Mesut Bestas, Niyazi Cem, Fuat Hayri Demir, Baki Demirhan, Tahir Elçi, Vedat Erten, Nevzat Kaya, Mehmet Selim Kurbanoglu, Hüsniye Ölmez, Arzu Sahin, Imam Sahin, Sinasi Tur, Ferudun Celik, Zafer Gür, Mehmet Biçen, Sinan Tanrikulu, Edip Yildiz, Abdullah Akin, Fevzi Veznedaroglu, Sedat Aslantas and Hasan Dogan. It was alleged that these lawyers had been brought to trial on charges relating to one or more of the following situations:

(a) Lawyers who repeatedly conduct defences before the State Security Court, in which case they are equated with the defendants' cause and, as such, are termed "terrorist lawyers" by the police, the public prosecutors and by the courts;

(b) Lawyers appearing in trials before the State Security Courts in cases of torture and extrajudicial killings and who have been qualified as "public enemies";

(c) Lawyers who publicly comment on the human rights practices of Turkey; and

(d) Lawyers who comment on the Kurdish situation.

It was further alleged that these lawyers were tried under emergency legislation which allows for incommunicado detention for a period of up to 30 days. It was also said that the lawyers have suffered economic sanctions and/or have been pressured, harassed, tortured, or become the target of "unknown perpetrator" killings. In addition, the Special Rapporteur referred to his letter to the Government of 16 February 1996 in which he expressed his wish to undertake a mission to Turkey.

169. On 27 May 1997, the Special Rapporteur transmitted an urgent appeal to the Government of Turkey concerning lawyer Mahmut Sakar, Vice-President of the Turkish Human Rights Association (IHD) and President of its Diyarbakir branch. According to the source, Mahmut Sakar was being detained and interrogated under the threat of torture. The Diyarbakir IHD office had reportedly been

searched and magazines, books and correspondence were confiscated. It was alleged that Mahmut Sakar had been detained solely on account of his work as a human rights advocate.

170. On 7 October 1997, the Special Rapporteur sent a joint communication with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning the lawyer, writer and doctor of philosophy Esber Yagmurdereli. According to the information received, Dr. Yagmurdereli was tried and sentenced to death in 1978 for "trying to change the constitutional order by force", under article 146 of the Turkish Penal Code. The sentence was commuted to life imprisonment on account of a physical disability. In 1991, Esber Yagmurdereli benefited from a conditional amnesty which suspended sentences for offences such as the ones contained in article 146 of the Turkish Penal Code. As a result of a speech made after his liberation, the Istanbul Security Court convicted him of "separatism", and sentenced him to 10 months' imprisonment. The sentence was confirmed by the High Court of Appeals. Consequently, the Samsun Criminal Court decided that Esber Yagmurdereli will be obliged to serve the remainder of his previous sentence. An appeal was reportedly turned down in mid-September.

171. On 7 November 1997, the Special Rapporteur transmitted an urgent appeal to the Government of Turkey concerning Judge Kamil Sherif, who resigned from a case on 6 November 1997 because of alleged intense pressure to influence the case from some foreign and Turkish institutions and politicians. The judge was presiding over the trial in the town of Afyon of nine police officers charged with the death of the leftist journalist Metih Goktepe in January 1996. The Special Rapporteur also referred to his letters to the Government of 16 February 1996 and 21 May 1997 in which he expressed his wish to undertake a mission to Turkey in order to investigate, in situ, allegations concerning the independence of judges and lawyers.

Communication from the Government

172. On 27 November 1997, the Government provided the Special Rapporteur with a reply to the joint urgent appeal sent on behalf of Esber Yagmurdereli. According to the Government, Mr. Yagmurdereli is a member of an illegal terrorist organization called THKPC (Revolutionary Pioneers of the People) and was sentenced to life imprisonment for having violated several articles of the Turkish Penal Code, including incitement to robbery by use of force and incitement to looting. He was released under a conditional amnesty on 1 August 1991, but committed another crime by contravening article 8 of the Anti-Terrorist Law (incitement to violence against the State through propaganda) only a month after his release. The Turkish Penal Code stipulates that if a person to whom a conditional amnesty is granted commits another crime, he or she would be required to serve the whole remainder of the previous sentence along with the new sentence. Mr. Yagmurdereli was then sentenced to 10 months' imprisonment on 28 May 1997 by the Istanbul Security Court and as he was required by law to serve the remainder of his previous sentence, he was consequently sentenced to a total of 23 years of imprisonment. His appeal was rejected on 20 October 1997. However, Mr. Yagmurdereli was released on 9 November 1997, on the grounds of his poor health, in compliance with article 339/2 of the Turkish Code of Criminal Procedure. The Government emphasized that the release does not constitute an

amnesty but a release on health grounds, and his sentence has been suspended for one year. The duration of this suspension is subject to the discretion of the Chief Public Prosecutor.

173. On 5 January 1998, the Government of Turkey provided the Special Rapporteur with a reply to his letter dated 7 November 1997 regarding the case of Judge Kamil Serif. According to the Government, Mr. Serif asked to resign as he claimed to be under pressure from public opinion, the media, the press and other circles, including some political parties. He claimed, furthermore, that he had been receiving letters and telephone calls from Istanbul, Ankara and Australia, and that he had been hurt and disturbed by local and foreign reports that he had been bribed. The Government added that Mr. Serif had declared his unwillingness to continue to preside over the trial as he had not been in a position to maintain his impartiality. The Special Rapporteur was also informed that in conformity with article 29 of the Turkish Code of Criminal Procedure a judge may request to be excused from a case on legal grounds and the approval or refusal of the judge's request is decided by the Superior Court. In this regard, the request of Judge Kamil Serif to be excused from the case of Mr. Metin Göktepe is being considered by the Sandikli High Criminal Court.

Observations

174. The Special Rapporteur thanks the Government of Turkey for its responses and welcomes the release of Esber Yagmurdereli, albeit on a suspended sentence for health reasons. With regard to the case of Judge Kamil Serif, it is not clear what steps the Government had taken to protect him from inappropriate and unwarranted interference with the judicial process as provided in principle 4 of the United Nations Basic Principles on the Independence of the Judiciary. The Special Rapporteur has not received a response to his earlier interventions dated 21 and 27 May 1997. In addition, the Special Rapporteur reiterates his interest in carrying out a mission to Turkey and hopes to receive a positive response to this request.

Venezuela

Communication to the Government

175. On 19 February 1997, the Special Rapporteur transmitted an urgent appeal to the Government of Venezuela concerning the case of lawyers Adrian Gelves Osorio and Joe Castillo, members of the Human Rights Office of the Apostolic Vicariate. According to the source, the Public Ministry brought charges of "usurpation of functions" against the Office of the Apostolic Vicariate. The charges were alleged to have arisen from two complaints sent in November 1996 to the General Commander of the State Police, concerning the death of a civilian at the hands of police agents. These complaints contained detailed information on the incident, including the names of witnesses, and requested an investigation. The Venezuelan Penal Code defines the felony charge of "usurpation of functions" as the "unauthorized assumption or exercise of public, civil or military functions". According to the source, there was no basis for such charge. It was reported that one of the main tasks of this organization is to monitor arbitrary acts of violence committed by police forces, especially against indigenous people. Registration of

formal complaints is part of its functions and is supported by the constitutional right of petition (article 67 of the Venezuelan Constitution).

Observations

176. To date the Government has not responded.

Yugoslavia

Communication to the Government

177. On 19 August 1997, the Special Rapporteur sent an urgent appeal to the Government of the Federal Republic of Yugoslavia in which he expressed his concern about Mr. Nikola Barovic, a lawyer and human rights advocate who, during a live television debate, was reportedly assaulted and seriously injured by a bodyguard of Mr. Vojislav Seselj, leader and presidential candidate for the Radical Party and Mayor of the Belgrade municipality of Zemun. According to the source, Mr. Barovic defends many politically unpopular clients in the former Yugoslavia, including both ethnic Croats and Serbs as well as Albanians. He was reported to have defended a family of ethnic Croats evicted from their homes following an eviction order issued by the Zemun municipality which was reportedly overturned by the Belgrade District Court on 10 July 1997. It was also reported that Mr. Barovic has spoken out publicly against the authorities' policy of ethnically motivated evictions.

Observations

178. So far, no response had been received from the Government of the Federal Republic of Yugoslavia.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

179. The Special Rapporteur views with some concern the increased number of complaints concerning Governments' identification of lawyers with their clients' causes. Lawyers representing accused persons in politically sensitive cases are often subjected to such accusations. Generally only a few lawyers undertake such cases in any jurisdiction; hence, they are usually quite visible. Identifying lawyers with their clients' causes, unless there is evidence to that effect, could be construed as intimidating and harassing the lawyers concerned. The Governments have an obligation to protect such lawyers from intimidation and harassment.

180. The United Nations Basic Principles on the Role of Lawyers expressly call upon Governments to guarantee, inter alia, the following:

> "16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and shall not suffer, or be threatened with, prosecution or

administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

"17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."

Principle 18 expressly provides that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

181. Hence, the Special Rapporteur considers that where there is evidence of lawyers identifying with their clients' causes, it is incumbent on the Government to refer the complaints to the appropriate disciplinary body of the legal profession.

182. There has also been an increase in complaints of Governments' non-compliance with internationally accepted standards of due process, particularly in terrorist-related crimes, raising questions concerning the integrity, independence and impartiality of the courts. The Special Rapporteur is continuing to gather information on this issue in order to better understand the difficulties faced by Governments in complying with the standards of due process in such cases and the extent of miscarriages of justice committed by the courts.

183. The Special Rapporteur also expresses concern over the number of countries where judges are appointed on a provisional basis without security of tenure in breach of principles 11 and 12 of the United Nations Basic Principles on the Independence of the Judiciary. Such appointments become a serious threat to the independence of the judiciary, particularly where the provisional judges are conferred with the same powers as permanent judges and remain on the bench for a prolonged period of time. Such provisional judges are vulnerable to executive interference and even tensions within the judiciary.

184. The problems faced by countries in transition in providing an independent and impartial justice system are a matter of concern. It is acknowledged that in addition to the lack of financial resources, the lack of human resources and of infrastructure are serious contributing factors. The prevailing situations in Rwanda, Cambodia and some countries in the Eastern European region are some examples. The Special Rapporteur continues to liaise with the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights in this regard.

B. Recommendations

185. Arising from some of the observations made earlier on the country situations and on his activities, the Special Rapporteur wishes to make some specific recommendations.

186. In the case of Switzerland, the Special Rapporteur recommends that the Swiss Government offer adequate compensation to Mr. Clement Nwankwo and thereby avoid any protracted civil suit before the Swiss courts and the resultant cost and expense.

187. In paragraph 4 of resolution 1994/41 creating this mandate the Commission urged all Governments to assist the Special Rapporteur in the discharge of his mandate and to transmit to him all the information requested. In the spirit of this paragraph the Special Rapporteur urges Governments that have not responded to his interventions and requests to undertake missions to do so.

188. The Special Rapporteur requests all Member States to respond promptly to the questionnaire on the implementation of the Basic Principles on the Role of Lawyers which is expected to be sent to Governments before the end of 1998 by the Centre for International Crime Prevention in Vienna. In this regard, the Special Rapporteur also requests Governments that have not responded to the earlier questionnaire on the implementation of the Basic Principles on the Independence of the Judiciary to do so as soon as possible.